# Extraterritorial Effects of Administrative *Paacts* in the Slovak Republic with Application to the International Driving Licence[1]

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***Abstract***

*This article deals with two different features of administrative acts. Specifically, these are extraterritorial effects and nullity. This combination of properties of administrative acts is specific but not rare. In the European legal area, but also outside it, this situation occurs regularly between Member States/non-Member States. It is a common but undesirable phenomenon. In the article, the authors point out the essence of both characteristics, the shortcomings in the legal order of the Slovak Republic and demonstrate the knowledge of legal science on a specific administrative act – the international driving licence. The article mainly uses scientific methods of analysis and description. The aim of the article is the analysis of the legal institutions of nullity and extraterritoriality and their interconnection. It points out the necessity of the existence of legal regulation of nullity.*

***Keywords:*** *nullity, extraterritorial effects, administrative act, international driving licence.*

***JEL Classification:*** K23, K33

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## 1. Introduction

Administrative acts are an indispensable part of the life of every individual, whether a member of the academic community, a practitioner or a member of the general public. Throughout their lives, individuals will encounter numerous administrative acts, such as birth certificates, driving licenses, building permits,

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marriage certificates, death certificates, decrees or laws, etc.

Administrative acts are the result of the procedures of administrative authorities in the performance of public administration tasks. The issuance of administrative acts must be based on legal grounds and carried out in a legally permissible manner. There is a presumption of their correctness and binding nature, which is a rebuttable legal presumption. In essence, an administrative act enters into force and effect or becomes final and enforceable – depending on its type, i.e. whether it is an individual administrative act or a normative administrative act.

Of course, errors may occur in the process of issuing administrative acts, rendering them defective. Depending on the seriousness of these shortcomings, administrative acts may have either remediable or irremediable defects. Remediable defects do not lead to the absolute nullity of the act and can be corrected by means of legal remedies, thus ensuring the remediation of the administrative act.

The authors are particularly interested in the second group of defects, which includes irremediable defects. This group includes serious defects that result in the absolute nullity and ineffectiveness of the administrative act in question. These are defects that render administrative acts null and void, which means that the act does not exist and is not binding on the addressees from the outset. A null and void administrative act, also called a "paact" in legal theory, is, according to the theory of administrative law, "legally non-existent" and cannot in any way give rise to the intended effects.

Nullity represents an undesirable property of administrative acts, undermining the principles of the rule of law. The aim of every State is to eliminate the occurrence of null and void administrative acts as their existence instils a certain distrust towards public administration authorities.

Public administration authorities are expected to adhere to legislation of general application by which they are bound in the performance of their tasks, understand their jurisdiction and competencies, and act in accordance with the law. A null and void administrative act is the result of a failure by the public administration authority to comply with these rules, thus not acting in accordance with *lege artis* principles.

Extraterritoriality is a legal phenomenon that has grown in importance since the creation of the European Union and the beginning of cooperation among multiple States. Generally, each State exercises its jurisdiction within its territory. Extraterritoriality is an exception to this rule, whereby States extend the exercise of their jurisdiction beyond their national territories, i.e., into the territory of another State. Extraterritoriality of individual administrative acts facilitates the movement of persons, goods, services, and capital among certain States. It is established by various international treaties, either bilateral or multilateral, and by the law of the European Union as a supranational grouping. Like the nullity of acts, extraterritoriality has its own characteristics. It can be characterised as a property of administrative acts conferred by States to unify procedures in various areas of law, simplifying and enhancing cross-border cooperation, which is desirable for the prosperity of the global market.

In this scientific article, the authors analyse the above-mentioned properties of administrative acts as individual legal phenomena, applying them to a specific

individual administrative act – the international driving licence. It is an individual administrative act with clear extraterritorial effects. Its essence lies in enabling its holder to drive a motor vehicle in countries outside their home State. However, the international driving licence can suffer from a serious defect – nullity, despite the fact that the Slovak legal order does not define a null and void administrative act nor describe its characteristic features. The institution of "paact" is not regulated in Slovak law.

The aim of this article is to point out the close interconnection between two different legal institutions: the nullity of administrative acts and the extraterritorial effects of administrative acts, with application to a specific individual administrative act – the international driving licence, in accordance with the legal order of the Slovak Republic and in conjunction with the Geneva and Vienna Conventions on Road Traffic, as well as European Union law. The authors analyse a situation where the international driving licence is a null and void administrative act, pointing out the consequences from the perspective of extraterritorial effects.

The authors formulated the following research hypothesis: *"The international driving licence is a transterritorial administrative act in the European legal area. An international driving licence issued without a valid national driving licence is a null and void administrative act and is subject to indirect nullity."*

The scientific article employs the scientific method of analysis to explain the issue by thoroughly examining individual legal phenomena. Further, description is used for a detailed description of the examined issue, and the method of concretisation is used to apply the information obtained about the legal institutions of nullity and extraterritoriality to a specific administrative legal act – the international driving licence, from the perspective of Slovak law.

## 2. Extraterritoriality

For centuries, the thesis prevailed that each State exercises its jurisdiction within its own territory, with any intervention by another State being inadmissible and infringing on the sovereignty of the original State. This means that a State could apply full jurisdiction only within its territory and could not interfere and apply its law on the territory of another State. In other words, a State's jurisdiction is limited by its territorial boundaries. States use jurisdiction to define their competencies, limits of their exercise, and associated effects. Jurisdiction is understood as the exercise of a State's powers over matters in which the State has a legal interest.

Under the influence of globalisation, the number of cases interfering with the jurisdiction of multiple States has increased, leading to the limitation of a State's jurisdiction as a territorial sovereign due to the application of the concept of extraterritoriality, as well as the proliferation of reasons for the exercise of the State's jurisdiction beyond the state borders, ultimately expanding the State's jurisdiction beyond its territory.[4]

[4] Elbert Ľ., *Koncept extrateritoriality a extrateritoriálnej právomoci z pohľadu súčasného medzinárodného*

Extraterritoriality challenges the classical understanding of state power or jurisdiction.

The term "extraterritoriality", as well as the very existence of administrative acts with this effect, is the result of globalisation processes in the world and the change in the perception of state sovereignty and the exercise of jurisdiction. Extraterritoriality represents a departure from the territorial jurisdiction of a State, as it involves extending the exercise of one State's powers into the territory of another State. It can be concluded that extraterritoriality means that one State exercises its regulatory jurisdiction (also) on the territory of another State.[5]

When issuing administrative acts with an extraterritorial dimension, the procedures and limits of international law must be respected, as well as those of EU law when a Member State of this organisation is concerned. Acceptable cases include situations where a State exercises its jurisdiction on the territory of another State, but in relation to persons having a relationship with that State by virtue of nationality or residence, where the State exercises its jurisdiction in particular in criminal matters even if only some partial conduct or partial consequences were on its territory, although the rest occurred on the territory of another State.[6] Finally, in certain cases, extraterritorial effects of legal acts occur when certain activities carried out abroad have an effect on the territory of the given State.[7]

Extraterritoriality, as a foreign word, can be most aptly translated as acting outside the territory. In terms of the effects of an administrative act, it refers to an administrative act whose effects occur outside the territory of the State whose authority issued the administrative act.[8]

In the contemporary context, extraterritoriality is a concept that States use to respond to matters of international concern, whether they be crimes under international law, commercial law matters, the protection of human rights or the protection of the environment. Applying extraterritoriality enables States to cooperate and respond to matters with a transterritorial, or cross-border, nature.[9] States that are contracting parties to the European Convention on Human Rights and Fundamental Freedoms must ensure the protection of rights concerning persons falling within their jurisdiction, even if these persons are outside the territory of the State concerned.[10] A number of international treaties obligate States to establish their criminal jurisdiction concerning suspects of serious crimes (such as war crimes, terrorism, etc.), provided that the person is within

*práva.* In Transteritoriálne (s)právne akty členských štátov Európskej únie (Košice: EQUILIBRIA, s.r.o., 2019), pp. 8, 10.

[5] Jakab R., Seman T., Jančát L., *Transteritoriálne správne akty v podmienkach Európskej únie a Slovenskej republiky* (Košice: EQUILIBRIA s.r.o., 2020), p. 208.

[6] Ibid.

[7] Ibid.

[8] Seman T., *Pojem a účinky transteritoriálnych aktov orgánov verejnej správy. In Extrateritoriálne účinky činnosti orgánov verejnej moci* (Košice, ŠafárikPress,2018), pp. 33–47.

[9] Elbert Ľ., *op. cit.*, 2019, p. 16.

[10] Judgment of the ECHR in Case of Al-Skeini and Others v. United Kingdom, Application No. 55721/07, of 7 July 2011.

the State's territory and the State does not extradite him or her for prosecution, even if neither the conduct nor its consequences have a territorial connection to the State.[11]

The extraterritorial effects of a particular administrative act may not always manifest, depending on the circumstances, whether the obligation arising from the administrative act in question is fulfilled in the State of origin or whether the administrative act is to be enforced abroad, provided that the State in which the transterritorial act of the foreign authority is to be enforced considers the decision of the foreign authority enforceable or the competent authority of the foreign State decides on the enforceability of the decision of the foreign administrative authority.[12]

In international law, authors are divided, with some distinguishing between the terms "extraterritoriality" and "extraterritorial jurisdiction". For example, Kelsen states that while extraterritorial jurisdiction represents the exercise of a State's jurisdiction outside its national territory, in the territory of another State, extraterritoriality represents immunity from the State's jurisdiction.[13] Other authors do not distinguish between these terms, indicating that the terms "extraterritoriality" and "extraterritorial jurisdiction" refer to the competence of a State to make, apply and enforce rules of conduct in respect of persons, property or events beyond its territory.[14] Another division is between extraterritoriality and so-called extended territorial reach.[15]

From the perspective of international law, it is necessary to ensure that the exercise of extraterritorial jurisdiction does not conflict with general principles of international law, such as the principle of non-intervention in the internal affairs of the State, the principle of territorial integrity and independence of the State.

Authors are also divided in relation to the recognition in international law of acts issued by officially non-recognised executive authorities. These are the so-called non-recognised regimes of non-recognised states, illegal occupations and annexations of foreign territory. Legal scholars in the field of public international law have identified various distinctive features of each of these phenomena. When recognising or not recognising these acts, it is necessary to take into account that the fact of recognition or non-recognition of a regime by another State is regularly influenced by current geopolitical and economic circumstances, which further complicate the whole issue.[16] Two main approaches (the normative approach and the factual approach) have emerged in legal science to deal with the legal implications of administrative acts issued by the authorities of non-recognised regimes. The normative approach does not recognise

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[11] Jakab R., *Extrateritorialita a transteritorialita v podmienkach EÚ a jej členských štátov*. In Extrateritoriálne účinky činnosti orgánov verejnej moci (Košice, 2018), p. 11.

[12] Seman T., *op. cit.*, 2018, pp. 33–47.

[13] Elbert Ľ., *op. cit.*, p. 9; Hans Kelsen, *Principles of International Law* (New York: Rinehart & Co., Inc., 2008), p. 235.

[14] Kamminga, M. T., *Extraterritoriality*. In: Wolfrum, R. (Ed.): *The Max Planck Encyclopedia of Public International Law*. Oxford: Oxford University Press, Vol. III, (2012), p. 1071.

[15] Scott, J., „Extraterritoriality and Territorial Extension in EU Law", *The American Journal of Comparative Law*, vol. 62, issue: 1, (2014), pp. 87–126.

[16] Corobana A., "Non-recognition of states as a specific sanction of public international law", *Juridical Tribune - Tribuna Juridica*, 9, issue 3 (December 2019), pp. 589–598.

administrative acts issued by non-recognised regimes, and its essence is uniformity in the relations governed by the public international law and in the relations governed by administrative law.[17] Under this approach, a missing "sovereignty link" represents a major obstacle for any legal consequences of those acts, issued by the authorities of non-recognised entities.[18] The opposite is the factual approach, which is in favour of the application of the law of "non-recognised regimes". It argues that the absence of international recognition must be considered a temporary one and, consequently, such absence cannot constitute a barrier for legal effects of foreign acts in the relations of administrative law.[19] The factual approach takes the view that what really matters in administrative law is not the official recognition of the other State, but merely the fact that this State effectively controls a certain territory, produces its own law and applies it accordingly.[20]

A specific form of extraterritoriality is transterritoriality. This means that legal acts issued by one State have the same legal effects on the territory of another State (or other States) as they have in the territory of that State, without the need for recognition under the law of the State concerned.[21] On the basis of the above, it is evident that transterritorial administrative acts constitute a greater interference with the sovereignty of the State concerned compared to the extraterritorial effects of administrative acts within the meaning of the defined content of the concept of extraterritoriality, outlined above.

The cross-border effects of transterritorial administrative acts may derive either from a rule of international law or Union law. It is one of the institutions that is also used within the European Union in order to harmonise the activities of the Member States, also in the field of application.[22] In the European Union area, transterritorial acts are the most frequently encountered. Their existence is an inherent part of the European area in connection with the implementation of the free movement of goods, persons and capital within the EU area. Since they are a more stringent interference with the exercise of jurisdiction of the Member States concerned, stricter conditions must be met:

- there must be a legal basis in international treaties or in the acts of an international or supranational organisation which derives from its Member States the right to issue such acts, in order to issue acts with transterritorial effects,

- reciprocal acceptance of the effects of legal acts of one State on the territory of another State is applied, and *vice versa*; in other words, a State is not only entitled to issue such acts, but is also obliged to accept the effects of legal acts of other States on

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[17] Handrlica J., Prokopová G., Serhiichuk L., Sharp V., "The enigma of recognition of administrative acts issued by non-recognised regimes", *Juridical Tribune - Tribuna Juridica*, Volume 13, Issue 4 (December 2023): pp. 513–535.

[18] Ibid.

[19] Ibid.

[20] Ibid.

[21] Jakab R., Seman T., Jančát L., *op. cit.*, p. 208.

[22] Jakab R., *Procesný postup odmietnutia transteritoriálnych účinkov de lege lata a de lege ferenda*. In *Transteritoriálne (s)právne akty členských štátov Európskej únie* (Košice: EQUILIBRIA, s.r.o., 2019), p. 97.

its territory.[23]

Foreign authors have defined a transterritorial administrative act as follows:

- it is an official decision on a specific matter, the purpose of which is to produce legal effects abroad, these effects occurring outside the territory of the State either without further action or as a result of the administrative authority itself crossing the State's borders in the course of its activity,

- any decision of the executive power of a State intended to produce legal effects outside the territory of that State in which the administrative authority which made the decision is located,

- a national administrative act with cross-border effects, the purpose of which is to bridge differences in national laws in order to implement freedoms without the need for detailed harmonisation.[24]

Although there is no clear definition of the concept of a transterritorial administrative act in legal science, there is a consensus on some of its characteristic features, namely:

- a transterritorial administrative act constitutes a form of *sui generis* action,

- the legal basis for the transterritorial effects of an administrative act derives from an act of international or Union law,

- institutional and procedural autonomy,

- inter-administrative bond and related reciprocity,

- the principle of being bound by the law under which it was issued and the supervision of the issuing State.[25]

The inter-administrative bond is a specific consequence of transterritorial administrative acts, namely in relation to the administrative authorities of other States. The inter-administrative bond is a consequence of a characteristic feature of these acts, i.e. reciprocity. This property – reciprocity implies that a sovereign State issues acts with effects in legal relations outside its own territory and at the same time, in its legal order, presupposes the acquisition of the same effects of foreign acts on its territory.[26] There is no uniform regime for the cross-border effects of administrative acts in the European Union which applies equally to all administrative decisions. The legal anchoring of cross-border effects is scattered in various directives and regulations of the European Union governing a certain area of administration, and it is possible to identify specific features of each type of administrative decision in relation to the application of cross-border effects.[27]

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[23] Jakab R., *op. cit.,* 2018, p. 11.

[24] For more details see Jakab R., *op. cit. (Procesný postup odmietnutia...),* 2019, p. 98.

[25] For more details see: Jančát L., *Ku „transteritorialite" vybraných (s)právnych aktov členských štátov Európskej únie.* In Transteritoriálne (s)právne akty členských štátov Európskej únie (Košice: EQUILIBRIA, s.r.o., 2019), p. 126.

[26] Handrlica, J., „Inter-administrativní pouto správních aktů v předpisech unijního práva", in *Societas et Iuurisprudentia*, Volume V, No. 3 (2017), pp. 82–113, Handrlica, J., „Vybrané problémy spojené s aplikací modelu transteritoriálních správních aktů". In *Studia Iuridica Cassoviensia,* Volume 5, No. 2 (2017).

[27] Jakab R., *Režimy voľného pohybu správnych rozhodnutí v podmienkach EÚ. In Extrateritoriálne účinky cudzích správnych rozhodnutí v podmienkach Európskej únie –východiská a súčasný stav Košice,* 2023, p.

### 3. Nullity and administrative acts[28]

Nullity is an undesirable property of administrative acts in any State governed by the rule of law. A null and void administrative act is a prime example of *"contradictio in adjecto"*, since the concept of nullity represents in its essence the absolute non-binding nature on the addressees, but an administrative act, or an administrative decision, is a legal act that meets all the formal and substantive requirements laid down by law, is legally binding and does not suffer from any defect, or suffers from a remediable defect. From the above it can be deduced that the phrase "null and void administrative act" is an absolute contradiction between the noun and the adjective. A comparable example is the phrase "square circle" or "black snow".

The concept of nullity with application to administrative acts has been discussed by a number of authors. The characteristics of this legal institution from the point of view of the rule of law, as well as from the point of view of the conditions of the European Union law, have also been dealt with by us in other scientific publications. Nevertheless, we consider it necessary to explain this legal phenomenon in this scientific article.

Null and void administrative acts are related to the exercise of executive power. An administrative act is generally an authoritative, unilateral, regulatory, binding act of power of a public administration authority, issued within the competence of that authority, in the prescribed form.[29] Administrative acts are the result of the activities of public administration authorities, are the means to fulfil the tasks and achieve the objectives of public administration. They are unilateral, supreme acts of the application of law. As an expression and result of public authority, they must comply with the requirements and formalities laid down by the legal order.[30]

Nullity is generally associated with individual administrative acts, as they concern specific links and relations and involve the application of law in public administration. However, in our opinion, a situation in which a normative administrative act is null and void is not impossible either. An example is the lack of jurisdiction of an administrative authority to issue a normative administrative act. In the Slovak Republic, this can be demonstrated by the situation if any ministry issued a law instead of a decree. The ministries are absolutely without competence and have no jurisdiction to issue a normative administrative act in the form of a law.

Under optimal conditions, an administrative act is issued by a competent public administration authority which has the power to issue it and has complied with all the

20. Zborník vedeckých prác. (Košice: ŠafárikPress, 2023), p. 11.

[28] For more details see Francová M., *Paakty ako nežiaduci jav v právnom štáte.* In Jakab, R., Berníková, E., Repiščáková, D. (eds.): *Správne právo bez hraníc. Zborník vedeckých prác*. (Košice: Šafárik Press, 2024), pp. 239–256.

[29] Seman, Tibor et al. *Správne právo hmotné. Všeobecná časť* (Šafárik Press, 2020), p. 143.

[30] Hofmann, H.C.H., Rowe, G.C., Turk, A.H. *Administrative Law and Policy of the European Union*. 1st Edition. Oxford: Oxford University Press, 2011, p. 151, where it is stated: *"The public administration must act under and within the law, whether as contained in primary and secondary legislation or in the jurisprudence of competent courts."*

legal requirements for form and content in its drafting. In other words, the primary objective of the public administration authority is to issue a defect-free administrative act which becomes final and enforceable, or enters in force and effect (depending on whether the administrative act is of an individual or normative nature), as stated in the Introduction.

Null and void administrative acts, also known as "paacts", are classified as non-existent, null and void acts according to the nature of their defects. The theory of administrative law considers paacts to be legally non-existent from the very beginning of their "existence", i.e. acts that do not give rise to legal effects and do not bind the addressee. It should be noted that not every defect in an administrative act renders it null and void. In order for an administrative act to be a pact, it must contain one of the defects classified as serious by the case-law and the theory of administrative law. The Slovak judicial authorities classify the following as serious defects: lack of a legal basis, lack of jurisdiction, the most serious defects of competence, absolute lack of form, absolute error regarding the addressee, lack of a factual basis, request for performance of a factually impossible act, vagueness, meaninglessness, etc. German public law even provides that a null and void administrative act is an act contrary to good morals.[31]

Non-existent administrative documents are those which lack essential elements regarding their nature and object, without which they cannot be developed, which were worked out or issued by violating the material or territorial competence (for instance, the mayor of a settlement pronounces a divorce or the local council regulates the behaviour of citizens from another settlement; or even the elaboration of a document by a person who does not have the status of public servant).[32]

Closely related to nullity is the doctrine of the presumption of correctness, according to which there is a rebuttable presumption that administrative acts are correct and binding. In Polish administrative law, this presumption is also encountered and is called "*domniemanie pravidlowości, legalności*". In its essence, the principle of the presumption of correctness means that administrative acts issued are presumed to be correct and binding until the contrary is proved.[33] The doctrine of correctness is of fundamental and crucial importance in any civilised State governed by the rule of law, since failure to respect the law and/or the decisions of public authorities would result in anarchy and the very negation of the meaning and purpose of the State as such.[34] The doctrine of correctness, also referred to in the literature as the principle of protection of trust in law, legal certainty and legitimate expectations, is found, with some minor variations and modifications, in most legal orders of existing States.[35] The French

[31] Kopp F.O., *Verwaltungsverfahrensgesetz.* 3. Auflage. (Munchen, C.H.Beck´sche Verlagsbuchhandlung, 1983) pp. 643–645.

[32] Belecciu S., Cojocaru Ion, „The cancellation of administrative acts", *Journal of Law and Administrative Sciences*, Special Issue (2015), pp. 860–867.

[33] Chróścielewski W., Tarno J.P., *Postepowanie administracyjne i postepowanie przed sadami administracyjnymi* (Warsaw, LexisNexis, 2009), p. 141.

[34] Moholániy M., *Limity zásady prezumpcie správnosti*. In Weis&Partners blog, 2023. Available on the Internet: https://akw.sk/limity-zasady-prezumpcie-spravnosti/.

[35] Craig P. *Administrative Law*. 1st edition (Oxford, Oxford University Press, 2006), p. 607.

doctrine defines this principle as the fact that public administrations may issue decisions which are immediately binding on the addressees and are considered lawful, and that, unless an individual administrative act is annulled by the procedure laid down, it is considered lawful and capable of producing the intended legal effects.[36]

Applying this principle to paacts, however, would constitute a denial of the rule of law and democracy. Therefore, in order to preserve the principle of legality, the principle of legal certainty gives way, with the result that the doctrine of the presumption of correctness does not apply to paacts. Ultimately, with a proper understanding of the nature of the legal institution of paacts, it is irrelevant to apply the principle of presumption of correctness to paacts if we consider a paact to be "legally non-existent" from the outset.

Here, it is appropriate to point out the current state of this legal institution in the Slovak Republic. The Slovak legislature has not yet paid sufficient attention to the legal institution of paacts, *de facto* the Slovak legal order does not have a legal regulation of this institution. We consider this state of affairs to be an absolute shortcoming which does not meet European standards.[37] The neighbouring States have in their legal orders a clear definition of the concept of nullity, its characteristics, the grounds for nullity as well as the procedure for the so-called "removal" of null and void decisions, or the procedure of administrative authorities and courts in declaring the nullity of an administrative act. In Romania, for example, legal science dealt with nullity of administrative acts during the interwar period, and currently the institution of nullity is regulated at the constitutional level.[38] Similarly, in Austrian law, the institution of paacts has its place. In the Austrian administrative law, the nullity of an act means that the decision has not been issued, and therefore, cannot give rise to any legal effects. [39]

A negative consequence of the absence of any legal regulation in the Slovak Republic is the fact that the addressees of a null and void administrative act can only defend themselves against it by means of remedies that can be applied in the case of an administrative act with remediable defects. This means that it is common to encounter a situation where a null and void administrative act has the same status for a certain period of time as an administrative act which fulfils the legal requirements.[40] In our opinion, this current situation is unacceptable and in flagrant contravention of the principles of a democratic State governed by the rule of law.

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[36] Chavrier A.L., Delamarre M., Paris, T. *Lecons de droit administratif général*. (Paris, Ellipses, 2010) p. 141.

[37] For more details see: Potešil L., *Nicotnost a správní rozhodnutí ve středoevropském kontextu* (Brno: Masaryk University, 2015), pp. 109 *et seq.*

[38] Rosca Ioana Andrea, „Aspects of the theory of non-existent administrative acts", *Research and science today*, 2/2018 (Autumn 2018): pp. 107–112.

[39] Frumarova K., „Nullity and other defects of administrative decision in the Czech Republic", *Baltic Journal of European Studies*, Tallinn University of Technology, Vol. 5, No. 2 (19) pp. 70–89.

[40] Handrlica J., *Prezumpcia správnosti a zákonnosť správneho aktu vo svetle aktuálnej rozhodovacej činnosti Európskeho súdneho dvora, Právny obzor*, vol. 1 (2007): p. 43.

## 4. Recognition and enforcement of administrative decisions

In the EU, there is no single, standard procedure for recognition and enforcement of administrative decisions. Nevertheless, the procedure for recognition and enforcement of administrative decisions in the EU is simpler and more coherent than the procedure for recognition and enforcement in relation to non-EU Member States. The recognition and enforcement of decisions within the EU has found its legal regulation and established procedure in EU primary and secondary law. However, the recognition and enforcement of decisions in the case of non-EU Member States is governed by international law and various international treaties, depending on the field or area of law. For example, the mechanism for the recognition of driving licences in relation to a non-EU Member State is regulated by the Geneva Convention on Road Traffic of 1949 and the Vienna Convention on Road Traffic of 1968.

Different types of administrative decisions within the EU are subject to different recognition and enforcement regimes. The legal anchoring of cross-border effects is scattered in various directives and regulations of the European Union governing a certain area of administration, and it is possible to identify specific features of each type of administrative decision in relation to the application of cross-border effects.[41] Administrative decisions can be divided into several categories according to the nature of their cross-border effects. Accordingly, we divide administrative decisions into the following categories:

- transterritorial administrative acts, which have cross-border effects directly *ex lege* without the need for recognition,
- administrative acts with cross-border effects *per recognitionem*, which only have cross-border effects if recognised by the State of destination,
- supranational administrative acts, which are adopted by all or several EU Member States.[42]

In this part of the article, we will refer specifically to the mechanism for the recognition of international driving licences issued by the authorities of a non-EU Member State. An international driving licence is an individual administrative act with extraterritorial effects.

This issue, as mentioned above, is regulated by two international conventions – the Convention on Road Traffic of 19 September 1949 (the so-called Geneva Convention) and the Convention on Road Traffic of 8 November 1968 (the so-called Vienna Convention). In the Slovak Republic, Act No. 8/2009 on road traffic, amending certain acts, as amended (the "Road Traffic Act") also applies to international driving licences.

A fundamental shortcoming of the Slovak legal order is the lack of an official translation of both international Conventions, published in the Collection of Laws. *De facto*, there is no official text of both Conventions in the national (Slovak) language.

[41] Jakab R., Repiščáková D. (eds.): *Extrateritoriálne účinky cudzích správnych rozhodnutí v podmienkach Európskej únie – východiská a súčasný stav. Zborník vedeckých prác* (Košice: ŠafárikPress, 2023), p. 11.
[42] Ibid, p. 12.

The Slovak Republic became a signatory to both international documents on the date of its establishment as a successor State after the division of Czechoslovakia. Only Communication of the Ministry of Foreign Affairs No. 4/2009 on accession to the Conventions, without their whole text, is published in the Collection of Laws of the Slovak Republic. We consider the above to be a serious shortcoming, as this is a comprehensive international legal regulation which also applies to the Slovak Republic's procedure for issuing international driving licences and recognising driving licences issued by non-EU Member States. The text of Act No 8/2009 on road traffic must comply with both Conventions and respect the procedural mechanism and conditions set out in the Conventions. Section 101(6) of the Road Traffic Act itself stipulates that an international driving licence shall be issued in accordance with the Geneva or Vienna Convention. This provision constitutes a blanket legal norm, but *de facto* without the possibility of finding the binding text of both Conventions. In our opinion, this situation undermines the legal certainty of both citizens of the Slovak Republic applying for an international driving licence and citizens of non-EU Member States applying for recognition of an international driving licence. At the same time, this situation can create an impression of mistrust towards the highest representatives of the Slovak Republic, as they have committed the State to a certain legal regulation in a specific area, the content of which cannot be found in the national language.

As for the international driving licence itself, it can only be issued by an authority of a signatory State that is also authorised to issue a national driving licence. The existence of an international driving licence is linked to the existence of a national driving licence (i.e. a driving licence valid in the territory of the State of residence). This international driving licence does not entitle a person to drive a motor vehicle in the State of issue, i.e. in the holder's home country; on the contrary, it entitles the holder to drive a motor vehicle abroad, in States which are contracting parties to the relevant international Conventions, and it is in these States that the international driving licence is automatically recognised, i.e. without the need for a separate recognition procedure. Section 102 of Act No. 9/2008 on road traffic specifies exactly which driving licences are recognised in the Slovak Republic. Act No. 9/2008 on road traffic, however, recognises two regimes in relation to the institution of exchange of a driving licence in case of establishment of residence in the territory of the Slovak Republic. It should be noted that both Conventions apply to all States of the European Economic Area as well as to other States that have voluntarily acceded to the Conventions. As regards the holders of driving licences from the States of the European Economic Area, they may apply for exchange of their driving licence when they become residents of the Slovak Republic. On the basis of the application, they will be issued with a so-called Slovak national driving licence. The situation is different for the holders of driving licences issued by a Convention State other than a State of the European Economic Area; in this case, these holders are obliged to apply for exchange of their driving licence, and unless they do so, their driving licence issued by such a Convention State becomes invalid in the Slovak Republic.[43]

[43] Act No. 8/2009 on road traffic, amending certain acts, as amended, Section 104(4, 5), Collection of Laws

In relation to driving licences, it is essential to mention Directive 2006/126/EC of the European Parliament and of the Council on driving licences, which establishes the obligation for Member States to implement its text in national legislation. It is aimed at harmonising the conditions for granting driving licences, tests, suspension, withdrawal, renewal, cancellation, etc. It also introduces a single form (model) of the driving licence and the compulsory elements of the driving licence. The aim of the Directive is to contribute to improving road safety and facilitate the free movement of persons taking up residence in a Member State other than the one issuing the driving licence. According to Article 2 of the Directive, driving licences issued by Member States shall be mutually recognised. On that basis, the driving licence is regarded as a transterritorial administrative act in the area of the European Union, since it acquires its extraterritorial effects directly *ex lege*. Decisions on pecuniary sanctions are another type of transterritorial administrative act in terms of their extraterritorial effects, since they are not a transterritorial administrative act with direct effects, but a *per recognitionem* act, since their effects on the territory of a Member State other than the one issuing the decision do not take effect until they are recognised by the competent authority of that Member State.[44] In relation to the signatories to the Geneva and Vienna Conventions, the international driving licence has extraterritorial effects and, pursuant to Section 102 of Act No. 8/2009 on road traffic, they are automatically recognised by the Slovak Republic, without the need for a special recognition procedure.

According to the Vienna and Geneva Conventions, an international driving licence is only valid if its holder also holds a valid national driving licence. The existence of an international driving licence is contingent upon a valid driving licence of the holder's home country, as also stipulated in Section 101(4) of Act No 8/2009 on road traffic. We express the opinion that this shortcoming, i.e. the existence of an international driving licence issued on the basis of an invalid home driving licence, can be classified as a serious defect, which would result in such an international driving licence being considered a null and void administrative act, as since the international driving licence would be issued without a sufficient legal basis and *de facto* without the jurisdiction of the issuing authority, since the requirements laid down by the Act and the Conventions are not met in this case. An international driving licence issued in this way would not entitle the holder to drive motor vehicles abroad, nor would an international driving licence suffering from this defect be recognised by the competent authorities of the Slovak Republic. In such a case, the holder of this document would have to apply for a new valid driving licence in his or her home country, based on which his or her home country could issue a new international driving licence. An *argumentum a contrario* can be made that, ultimately, this is a remediable defect, which partially cannot be disagreed with. However, a *de facto* null and void administrative act, which is considered "legally non-existent", actually exists and must be dealt with by the competent authorities. This proposed method involves issuing a new valid driving licence in the State of residence, which forms the legal basis for the issuance of an

of the Slovak Republic.

[44] Jančát L., „Special regime for the recognition of decisions on financial penalties: complex analysis", *Juridical Tribune - Tribuna Juridica*, Volume 13, Issue 1 (March 2023): pp. 93–119.

international driving licence. Such a procedure constitutes a form of indirect nullity and, of course, the issuance of a new national driving licence or international driving licence would have to be preceded by a decision of the competent public administration authority, which would declare the existing international driving licence a paact.

## 5. Conclusion

The present scientific article provides an analysis of individual partial institutions related to paacts with extraterritorial effects. The authors focus their attention on the essence of the individual legal institutions and point out the shortcomings of the Slovak legislation.

In this article, the authors discuss the interconnection between two properties of administrative acts – nullity and extraterritoriality. It is indisputable that in the Slovak legal environment little attention is paid to these properties of administrative acts, despite the fact that they are essential legal institutions that have a wide range of legal consequences. The absence of the legal institution of nullity in the conditions of the Slovak Republic is undesirable, and this situation poses a serious problem for any identification and inclusion of individual situations under the institution of nullity.

In the article, the authors applied the knowledge of legal science on nullity and extraterritoriality to the international driving licence, since this individual administrative act constitutes a form of decision or authorisation for its holder to drive motor vehicles outside his or her home State. This individual administrative act has the property of extraterritoriality and, in relation to the EU Member States and the signatories to the Vienna and Geneva Conventions, even the effect of a transterritorial administrative act. At the same time, the authors draw attention to the possible nullity of an international driving licence if it is issued on the basis of an invalid national driving licence, since this is a mandatory requirement under the Vienna Convention. In the authors' opinion, this shortcoming can be subsumed under the ground of nullity, since there is no sufficient legal basis for issuing an international driving licence and the competent administrative authority *de facto* exceeds its jurisdiction. According to case-law and legal science, lack of a legal basis and lack of jurisdiction are forms of serious defects leading to nullity.

At the same time, the authors consider that this situation constitutes an indirect nullity. In the authors' view, where an international driving licence has been declared null and void, no legal provision prevents the holder from applying to the competent authorities in his or her home State for a new national driving licence, provided, of course, that all the essential formal and substantive requirements are met.

It is evident from the above that the research hypothesis formulated by the authors has been confirmed.

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