

## Article

# Theory of Endorsements: Legislative and Jurisprudential Development in Romania and in the European Union

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**Abstract:** Considered as being the main component element of the advisory procedure, an endorsement is an opinion that an administrative body requests from certain authorities and administrative structures, according to the subject matter of the regulation, to adopt/issue an administrative deed. In this article, using logical interpretation as well as comparative analysis, we set out to highlight the significance of endorsements in Romania, outline their legal nature, and establish the relationships between the types of endorsements, so that the conclusions may represent a starting point for a future theory of this type of documents. We considered the French specialty literature to give a comparative law note to our approach. At the same time, we considered certain types of endorsements in some European states, based on the analysis of a Codex regarding a series of Constitutions of some European states in order to emphasize the importance they give to these endorsements. We gave an overview of the theory of endorsements through the lens of the existing legislation over time in Romania or rather, its lack thereof. In our study, we also referred to the draft ReNEUAL Code of Administrative Procedure of the European Union, which aims at “transposing the European values into the regulation of administrative procedure related to the non-legislative implementation of European Union law and policy”. We set out on this analysis, considering the lack of legal regulation of endorsements, their legal nature, and their effects, with reference not only to doctrine but also to some cases that we considered for analysis from court practice. In the framework of the new effort to develop the Code (still in the draft form) in Romania, it seems that endorsements will receive their well-deserved place, distinct from simple administrative operations. Our main approach concerns Romanian legislation, doctrine, and jurisprudence, but it also includes a brief analysis of the jurisdiction of the Court of the European Union, with reference to the endorsements issued at the level of the institutions of the European Union. As a general conclusion, we believe that endorsements should be separately regulated, by clearly distinguishing between administrative documents and administrative operations, in the future Code of Administrative Procedure.

**Keywords:** endorsement; interwar doctrine; contemporary doctrine; administrative litigation court



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## 1. Theory of Endorsement in Romania: Administrative Operations—The Interwar Doctrine versus the Contemporary Doctrine

Over time, the doctrine, without exception, considered an endorsement as part of the preliminary administrative operations. In the interwar doctrine (Rarincescu 1936, pp. 248–54), the administrative act, which has the capacity to produce legal effects, was differentiated from the other acts, depending on their susceptibility to being appealed directly through the administrative litigation court.

Regarding the documents that could not be the subject of an action in the administrative litigation court, the following categories (Rarincescu 1936, pp. 248–54) were identified: material administrative facts and preparatory acts and measures. In the latter category, three types of documents were mentioned, namely, investigations and reasoned reports,

the prior endorsement of some commissions or administrative authorities necessary to take some measures, those approved or not, the endorsement of some commissions of technical experts, and disciplinary commissions. So, according to the doctrine of the interwar period, endorsements were mentioned as a distinct category. Moreover, these were not mere formalities, being included in the chapter dedicated to the revocation of administrative acts (Rarincescu 1936, p. 117 and the next), “which can be withdrawn or canceled as long as the final decision or act has not intervened, which alone creates a definitive legal situation, which gives rise to rights” (Rarincescu 1936, p. 124). In terms of the preliminary formalities, it was specified that “the administrative body can refuse to take the measure, even if the preliminary formalities have been fulfilled” (Rarincescu 1936, p. 128), thus giving efficiency to the assessment of the opportunity in the issuer’s charge.

After 1990, in the doctrine<sup>1</sup> (Iorgovan 2005), it was stated that among the procedures prior to the issuance of the administrative act, special, theoretical, and practical problems arose from *the endorsements and prior agreement*. In the view of the quoted author, an endorsement represents “any unilateral manifestation of will, which conditions or, as the case may be, substantiates the unilateral manifestation of will of the administrative body” (Iorgovan 2005, p. 57), since through endorsements “there are established the opinions of another body than the one that aims at issuing an administrative act, endorsements that the issuing body may or may not take into account”. However, it is further emphasized that an endorsement, regardless of the category, does not itself produce legal effects (Iorgovan 2005, p. 57).

After analyzing the provisions of the Administrative Code<sup>2</sup>, we can say that it operates with the concept of approval and endorsement at all levels of public administration. In this context, an endorsement remains a prior procedural operation (Vedinaş 2021a, p. 265), as it is not an independent institution. In the specialized literature (Vedinaş 2021b, pp. 358–59), the following characteristics of administrative operations have been highlighted: they are concrete, material forms through which they act on existing reality without materializing a manifestation of will; the purpose for which they are conducted may consist of (a) mediating the issuance (adoption) of administrative acts (in the sense that it determines or conditions their issuance and validity, which makes them traditionally referred to as preliminary or preparatory acts) or in putting them into enforcement and (b) in achieving the other objective of the administration: the execution of the law.

And yet, *what is an endorsement?* Is it an administrative operation prior to issuing an administrative act or is it an independent institution? Starting from a Latin adage invoked by a renowned teacher (Podaru 2022, p. 3) (of course, with reference to the definition given by the legislator to an administrative act)—*Omnio definite in jure periculosa est*<sup>3</sup>—we ask ourselves whether or not a legal definition of an endorsement is useful. Certainly, this fact is required, and we express our hope that the specialists involved in the development of the new draft of the Code of Administrative Procedure understand this utility and, above all, will highlight the importance of the concept.

In our opinion, endorsements should be removed from the scope of preliminary administrative operations, in the sense of defining an independent institution of administrative law. Considering an endorsement as a simple administrative operation will reduce its importance and turn it into a mere procedural formality.

Why do we advocate such an approach? As noted in the doctrine, in recent years, there has been a process of converting some administrative operations, prior to issuing an administrative act, into administrative acts (Iorgovan 2005, p. 57). If the legislator established the necessity of requesting an endorsement, considering the specialization of another state body or a specialized body, it is required to remove it from the scope of simple administrative operations, devoid of legal effects.

<sup>1</sup> In the same sense see (Vedinaş 2021b, p. 358): “it cannot be stated categorically that there are material facts, administration operations that are devoid of any charge, legal meaning”.

<sup>2</sup> Approved by Government Emergency Ordinance no. 57/2019.

<sup>3</sup> “Any definition in civil law is dangerous”.

Obviously, not every endorsement should be viewed from this perspective. The only types of endorsements whose content the issuing body of an administrative act is obliged to consider are those that are compliant (or mandatory); otherwise, the act is likely to be annulled. In the case of *advisory endorsements*, the issuer of an act is obliged to request them but is not bound by their content. Regarding optional endorsements, the issuer of an act can decide whether to request them or not.

Therefore, the choice of this topic is based on the urgent need to clarify certain aspects, since there are currently different opinions on this topic.

In carrying out this research, we pursued the following objectives:

- Analysis of the legislation, doctrine, and jurisprudence in Romania regarding endorsements in three forms (compliant, advisory, optional);
- Clarifying the notion of an endorsement, by establishing the differences between it and other documents;
- Highlighting the importance of an endorsement in some member states of the European Union;
- Highlighting the role of endorsements in public administration in Romania and the need to include the definition of endorsement in the future Code of Administrative Procedure, as well as establishing its legal regime.

The main research methods that we have used in the study are established methods of legal methodology, namely, the logical method, the comparative method, and the historical method (in the first part of this paper, with special reference to the doctrine from the interwar period).

The main limitation of this research is related to the aspects of comparative law, being caused, on the one hand, by reasons related to linguistic diversity, and on the other hand, by the large volume of information contained in the specific legislation of the member states of the European Union.

## **2. The (in)Existence of a Legal Regulation of the Various Endorsements in Romania—Awaiting the Code of Administrative Procedure (and Not Only)**

The Contentious Administrative Law no. 554/2004 defines an administrative act as *“the unilateral act of an individual or normative character issued by a public authority, under public power, in order to organize the execution of the law or the concrete execution of the law, which gives rise to, modifies or extinguishes legal relations; they are assimilated to administrative acts, for the purposes of this law, and the contracts concluded by public authorities whose object is the valuation of public property, the execution of works of public interest, the provision of public services, public acquisitions; other categories of administrative contracts can be provided for by special laws”*.

Establishing the difference between an administrative act, endorsement, and administrative operation starts from the legal effects they create and if they give rise to, modify, or extinguish legal relationships. From this point of view, we distinguish administrative acts from the other two categories (endorsement and administrative operation).

Thus, regarding the differences between endorsements and administrative documents, the following differences were highlighted in the doctrine:

- Both endorsements and administrative documents represent manifestations of unilateral will;
- The manifestation of will embodied in an administrative act is achieved in order to produce legal effects, to be distinguished from endorsements, which have neither this purpose nor these consequences. Therefore, it is emphasized in the specialized literature that endorsements, by themselves, do not produce legal effects, but condition or, as the case may be, substantiate the manifestation of the will of the administrative body. On the other hand, this differentiation is of practical interest, in the case of administrative litigation court, since administrative operations cannot be appealed separately through direct action, but they are not totally exempt from this control (Apostol Tofan 2020, p. 28). In this sense, the provisions of art. 18 par. (2) from Law no. 554/2004, which establishes the jurisdiction of the administrative litigation court

to rule on the legality of the administrative operations that were the basis for issuing the act subject to judgment.

Endorsements and administrative acts are issued by different authorities. They can be requested from a hierarchical authority or from another public body, located at the same level or at a lower or higher level than the body they are requesting.

In general, administrative operations are defined as representing the technical–material operations carried out by the public administration for the purpose of drafting, adopting, or executing administrative acts or awarding, concluding, and executing administrative contracts (Săraru 2016, p. 181).

An endorsement should not be confused with *approval*, which represents a “manifestation of will of a public authority determined by law, through which it expresses its consent to the issuance/adoption of an administrative act by another public authority” (Lazăr 2004, p. 135).

As in the case of an endorsement, an *approval* cannot be the subject of an action in the independent administrative litigation court. Its legality can be verified by the administrative court in the action filed against the administrative act on which it is based.

As we have pointed out, an endorsement, with its three forms (compliant, advisory, optional), is not defined by the Romanian legislation.

In the content of the preliminary theses of the draft Code of Administrative Procedure approved by G.D. no. 1360/2008, among the new elements and legislative solutions it establishes, it is noted that “the regulation of the procedural formalities necessary for the issuance/adoption of administrative acts (types of endorsements and majorities), and the rationalization of the legal regime applicable to administrative operations—the regulation of the categories of administrative operations, of their ascertaining documents/records, the form of administrative operations”. We find that, at that time, the importance of separating endorsements from administrative operations was understood, which is an approach that should have been continued.

In the draft of the Code of Administrative Procedure from 2008, art. 8 established the following:

(1) *Administrative operations are manifestations of will or activities of public authorities, which do not produce legal effects by themselves.*

(2) *Administrative facts are those circumstances and events that produce legal effects under the law. Administrative facts are ascertained by public authorities through administrative operations.*

The same draft of normative act, in art. 98 par. (1), defined an endorsement as “the opinion requested by the competent public authority to issue/adopt the administrative act to another public authority, regarding the legality and/or opportunity of issuing/adopting the act, respectively the content of the act”.

At the same time, art. 99 established the content of the three types of notices, as follows:

“(1) *The endorsements can be: optional, advisory or compliant. If the law does not expressly provide for the nature of the endorsement, it is considered to be advisory.*

(2) *The endorsements are optional when the initiator of the administrative act is not obliged to request them. In cases where the endorsement was requested and obtained, the initiator of the act is not obliged to comply with it.*

(3) *The endorsements are advisory when the initiator of the administrative act is obliged to request them but is not obliged to comply with their content when issuing/adopting the administrative act.*

(4) *The endorsements are compliant, when the initiator of the administrative act is obliged both to request them and to respect them. The approval also bears the name “agreement”.*

(5) *In the cases provided for in par. (2) and (3), the initiator of the act, after obtaining the approval, finalizes the project, retaining or rejecting with reason the recommendations or observations formulated by the approving authorities. If, following the received recommendations and observations, the essential changes are made to the initial project, other endorsements than the initial ones will be requested, depending on the changes.*

(6) *In all cases, the administrative act can be issued/adopted, if the opinion was not issued within the term provided by the special law or established by the public authority that requested it. If there is no such term, the general term provided for in this code shall apply.*

(7) *The responsibility for the legality of the administrative act belongs mainly to the issuer; the authorizing authority is alternatively responsible for the content of the compliant endorsement."*

Within the project the "Instruments for systematization of legislation, monitoring and evaluation in public administration", code SIPOCA 59 (Ministry of Development, Public Works and Administration 2023), the procedure for drafting the Code of Administrative Procedure also started or better said, was picked up where it left off for more than 13 years.

In the document (brochure (Broșură de Prezentare a Proiectului Codului de Procedură Administrativă/Presentation Brochure of the Draft Code of Administrative Procedure 2023, p. 11) presenting the project of the Code of Administrative Procedure, it is expressly mentioned that "Administrative operations underlying the issuance/adoption of administrative acts, some specifically identified in the existing legislation, under the name of endorsements, approvals, agreements, etc. must know a concrete regulation from the perspective of the general rules to which they are subject, the elements of the doctrine proving over time to be insufficient and sometimes ineffective".

At the same time, it is specified that essential definitions should be included, such as those regarding the following notions: (...) administrative operation, endorsement, optional endorsement, advisory endorsement, compliant endorsement, agreement, etc. (Ministry of Development, Public Works and Administration 2023).

Currently, an advisory endorsement is the only one that has a constitutional determination (Vedinaș 2021b, p. 374). It is about art. 146 letter h) from the Romanian Constitution, which refers to the "advisory endorsement" given by the Constitutional Court for the procedure for suspending the President of Romania from office.

One of the most controversial areas in which endorsements are regulated is that of land use and urban planning.

Through the National Recovery and Resilience Plan (PNRR), Component 5—Renovation Wave and Component 10—Local Fund, our country has undertaken the systematization and codification of legislation to support the implementation of investments in the transition to green buildings, achieved through the entry in force in the first quarter of 2023 of the Land Planning, Urban Planning and Construction Code, on the website of the Ministry of Development, Public Works and Administration, the Draft Law for the approval of the Land Planning, the Urban Planning and Construction Code was submitted to public debate (Ministry of Development, Public Works and Administration 2023). One of the essential elements of the project, as it emerges from the Statement of Reasons, considers "the involvement of the approval of the territorial development documentation and urban planning documentation", thus taking into consideration the following aspects:

- *The process of approving territorial development documentation and urban planning documentation, which today is difficult and lengthy due to the different times for issuing endorsements and their limited validity, is proposed to be greatly simplified by replacing the "cascade" approval system with a system of single endorsement, based on the permanent dialogue between all factors through the establishment of a single approval commission (national/county/local) with the aim of ensuring both coherence, efficiency, and effectiveness, as well as improving the quality of these documentations;*
- *Instead of the endorsements issued by several ministries/central authorities, a single endorsement will be issued, within an inter-ministerial commission led by the specialized ministry.*
- *The endorsements given at the local level will be obtained within a single approval commission that will be involved from the initiation phase of the documentation, integrating the theme data and making available to the local public authorities responsible for approving the plan all the necessary information, in order to avoid potential blockages caused by misunderstandings or lack of correlation in sectoral areas.*

It should be mentioned that for the purpose of drafting the Code of Land Development, Urban Planning and Construction, substantiation analyses were carried out both in the pro-

cess of drafting the preliminary theses, started in 2016, and completed by their approval by Government Decision no. 298 of 10 March 2021, as well as within the project “Systematization of legislation in the field of territorial development, urbanism and construction and strengthening the administrative capacity of specialized structures from central public institutions with responsibilities in the field” SIPOCA 50<sup>4</sup>. This project aims at achieving specific objectives, which consist, among others, of ensuring the systematized and optimized legislative framework through the elaboration of the *Code of Land Development, Urban Planning and Construction*.

This year, a legislative proposal was made for the amendment and completion of Law no. 50/1991, regarding the authorization of the execution of construction works, for the amendment and completion of Law no. 350/2001, regarding the planning of the territory and urban planning, and for the amendment and completion of the Administrative Litigation Law no. 554/2004<sup>5</sup>. In the statement of reasons, among others, the issue of the legal nature of the urban planning certificate is invoked, and the courts are oscillating between administrative act and prior operation<sup>6</sup>.

Another normative act that constitutes a first step in the adoption of a code in another area of public interest is Government Decision no. 1.070 of 24 August 2022<sup>7</sup> for the approval of the preliminary Theses of the draft *Code of Community Services of Public Utilities*<sup>8</sup>. Although there is no reference to the regulation of endorsements from the content of the normative act, we express our hope for greater transparency and better regulation of them in the future Code. This is because currently, the normative acts that regulate community services of public utility use, most of the time, have unclear wording, such as “having all the endorsements, agreements and authorizations necessary for the supply/performance of the public utility service and the exploitation of the related public utility systems, provided for by the legislation in force or, as the case may be, proof of their request”<sup>9</sup> or “they are obliged to prove that they have all the endorsements, agreements and authorizations necessary for the performance of the service”<sup>10</sup>, provided by the legislation in force for its specific activities”.

In conclusion, a general character can be noted without reference or a clue to the specific legislation and necessary endorsements.

As mentioned in the French specialist literature (Truchet 2010, p. 104; Rouault 2005, p. 293), the ancient phenomenon of consultative administration has greatly developed. It includes a considerable number of bodies that intervene before issuing a decision, for

<sup>4</sup> <https://www.mdlpa.ro/pages/scurtadescriereproiectsipoca50> (accessed on 5 August 2023).

<sup>5</sup> Pl-x nr. 317/2022.

<sup>6</sup> We believe that the issue has been settled with the pronouncement by the ICCJ of Decision no. 25/2017. Through this decision, the supreme court ruled that it is possible to exercise the control of legality, separately, on the urban planning certificate, by which the prohibition to build was ordered or which contains other limitations. Therefore, we can speak of a dual legal nature of the urban planning certificate, depending on its content and the effects it produces. The decision was published in the Official Monitor, Part I no. 194 of 2 March 2018.

<sup>7</sup> Published in the Official Monitor no. 858 of 1 September 2022.

<sup>8</sup> The decision to develop and promote a Code of community services of public utilities was taken considering the measure provided for in the 2020–2024 Government Program and considering the conclusions resulting from the analysis of the legislative and institutional framework for the provision of public services at the level of public administration. This analysis is a result of the project Strengthening the framework for increasing the quality of public services and supporting development at the local level, implemented by the Ministry of Regional Development and Public Administration, through the Directorate for Decentralization of Public Administration, in partnership with the National School of Political and Administrative Studies, co-financed by the European Social Fund (ESF) through the Administrative Capacity Operational Program (POCA), priority axis 1: Efficient public administration and judicial system, specific objective 1.1: Development and introduction of common systems and standards in public administration that optimize citizen-oriented decision-making processes and the business environment. The purpose of the project was the development of a unitary set of tools to strengthen the capacity of the public administration to efficiently and effectively provide quality public services for citizens and the business environment.

<sup>9</sup> Art. 40 letter c) of the Law on community services of public utilities no. 51/2006, republished in the Official Monitor of Romania, Part I, no. 121/5, March 2013.

<sup>10</sup> Art. 49 para. (2) from Law no. 51/2006.

recommendations, proposals or to give endorsements. Their names vary, but most of the time, they are councils, commissions, committees, etc. In general, their consultation is mandatory by the text that provides for it. Mandatory endorsements are quite rare. The bodies consulted are not administrative authorities. But certain advisory bodies sometimes play such an important role in the decision-making process that they are their author (Truchet 2010, p. 105). A special role in the consultative process belongs to the Council of State, which has not only a jurisdictional function but also an advisory function to the Government, a fact criticized in the French doctrine.

### 3. The Regulation of Endorsements at the European Level—Aspects of Comparative Law

In the context of this scientific approach, it is also worth mentioning the elaboration of the ReNEUAL Model Rules on EU Administrative Procedure<sup>11</sup>. From the analysis of the “books” that compose it, we can also speak at the level of institutions of the European Union by a process of recognition of the importance of endorsements. For example, in book II, *Elaborarea regulilor administrative/The Development of administrative rules*, it is mentioned (...) that the European Aviation Safety Agency (EASA) and the European Securities and Markets Authority (ESMA) have been empowered to adopt opinions and drafts on the implementation of delegated or implementing acts, which oblige the Commission to comply with certain procedural requirements before rejecting or amending them. The EASA rulemaking shows an attempt to impose certain substantial requirements on the Commission. Therefore, the Commission is not free to change any “technical” norms proposed as part of a draft implementing act without prior coordination with the agency<sup>12</sup> (Hofmann et al. 2016, p. 45 and the following). Another mention of the importance of the endorsement can be found in a reference work (Codrescu et al. 2016, p. 239), in which it is noted that these *model rules regulate the European Commission on Data Protection in the second option not only as a preparatory structure or approval but as a structure empowered to adopt binding decisions on issues related to data protection, stemming from the combined management of information*. Moreover, although endorsements are included in the *informal rules* (...) called “soft law”, they still “play an important role in the institutional reality of the EU and its member states”, appreciating that they “fill the gaps in the formal regulation, structure the interaction between administrations at the European and national level and informs people about potential future decision-making processes of the institutions. In these functions, the line between official and formal non-binding acts can be significantly blurred, especially in cases where informal rules are used, for all practical purposes, when it comes to replace the formal drafting process” (Codrescu et al. 2016, p. 43).

At the level of European states, we find references to the institution of endorsements, since the fundamental laws are proof of the importance that the respective states give to them. Thus, in Austria, within the Constitution, the concept of endorsement is regulated in Chapter 6—The relationship between national law and European Union law, in the sense that “The Federation will immediately inform the territorial units about all projects carried out at the level of the European Union that affect the autonomous sphere of the jurisdiction of the lands or that could be of interest to them and will give them the opportunity to formulate endorsements within a reasonable period to be established by the Federation. The same applies to municipalities” (Deaconu et al. 2015, pp. 17, 46). At the same time, art. 50c of the same Constitution states at par. (1) that “The responsible federal minister must immediately inform the National Council in relation to the works related to the European Stability Mechanism, according to the regulations of the federal law regarding the procedural rules of the National Council. This must provide for the right of the National Council to formulate endorsements” and in par. (2) that “To the extent that the National Council formulated endorsements within the deadline regarding the works related to the European Stability Mechanism, the representative of Austria within the European Stability Mechanism must respect them during the negotiations and the vote.

<sup>11</sup> <http://www.reneual.eu/projects-and-publications/reneual-1-0> (accessed on 13 August 2023).

<sup>12</sup> [http://www.reneual.eu/images/Home/BookII-AdministrativeRulemaking\\_individualized\\_final\\_2014\\_09\\_03.pdf](http://www.reneual.eu/images/Home/BookII-AdministrativeRulemaking_individualized_final_2014_09_03.pdf) (accessed on 13 August 2023).

*The responsible federal minister must report to the National Council immediately after the vote is over and, if necessary, show the reasons why the representative of Austria did not comply with the endorsements". Last but not least, we also find a reference to the notion of endorsement in art. 59b, according to which "At the request of a public sector employee who is a member of the National Council or the Federal Council or at the request of his hiring authority, the Commission will issue an endorsement on the disputes between the public sector employee and the hiring authority in application of the article 59a or in relation to the regulations issued under its application. The commission will also issue endorsements in relation to disputes between a judge and a chamber or commission within the meaning of article 87, paragraph 2, as well as in relation to disputes between a member of the National Council or the Federal Council and the President of the National Council in application of article 30, paragraph 3".*

Art. 54 of the Belgian Constitution states that "With the exception of budgets and laws that require a special majority, through a reasoned proposal, signed by at least three-fourths of the members of one of the linguistic groups and presented after the submission of the report and before the final vote in public meeting, it can be declared that the provisions it indicates from a draft law of the Government or from a legislative proposal can bring serious damage to relations between communities. In this case, the parliamentary procedure is suspended and the proposal is submitted to the Council of Ministers, which, within 30 days, provides a reasoned endorsement on the proposal and invites the Chamber involved to decide on the endorsement in question or on to the Government's draft law or to the legislative proposal that has been modified, as necessary. This procedure can be applied only once by the members of a language group with regard to a specific Government bill or a specific legislative proposal" (Deaconu et al. 2015, p. 160). At the same time, in art. 143 sct. 2., the Senate makes decisions, based on reasoned endorsements, regarding conflicts of interest that may arise between the assemblies that legislate by laws, federal laws, and the norms referred to in article 134, according to the conditions and in the manner established by the law adopted with the majority provided for in article 4, the last paragraph. However, this procedure does not apply to "laws, decrees, regulations, acts and decisions of the federal state regarding the foundations of taxes, tax rates and exemptions, as well as any other element that has a role in the calculation of income tax"<sup>13</sup>. At the same time, the Belgian Constitution speaks of "reasoned endorsement". "In the case of the appointment of a judge of the court of appeal or of the Supreme Court, the court in question issues, in the general assembly, a reasoned endorsement, in the manner established by law, before the nomination mentioned in the previous paragraph", but also "In the case of the appointment to the position of The First President of the Supreme Court or the First President of a court of appeal, the general assembly of the relevant Court issues a reasoned opinion, in the manner established by law, before the nomination mentioned in the previous paragraph"<sup>14</sup>. Regarding the Council of State, the constitutional legislator mentioned the fact that it "takes decisions through judicial decisions as an administrative litigation court and issues an opinion in the cases provided for by the law"<sup>15</sup>.

The Constitution of the Republic of Cyprus states in art. 3—the Judicial power that "The President of the Supreme Court is appointed and dismissed from office by the Parliament upon the proposal of the President of the Republic and based on the prior opinion of the plenary session of the Supreme Court and the competent committee of the Parliament. His mandate is of four years" and "The Chief Prosecutor is appointed by the Parliament for a four-year mandate, at the proposal of the Government and based on the prior opinion of the competent committee of the Parliament. The constitution also establishes a National Council of Public Prosecutors, with composition and powers similar to those of the National Judicial Council, but distinct from it, and specifies that only the National Council of Prosecutors will have powers regarding the legal status of prosecutors". "Based on the

<sup>13</sup> Art. 143 sct. 4.

<sup>14</sup> Art. 151 sct. 4 and sct. 5.

<sup>15</sup> Art. 160.



prior countersignature of the Prime Minister of the Republic of Croatia, the President of the Republic appoints and recalls the diplomatic representatives of the Republic of Croatia at the proposal of the Government and based on the opinion of the competent committee of the Croatian Parliament<sup>16</sup>. At the same time, based on the prior endorsement of the competent committee of the Croatian Parliament, the appointment of the heads of the security service is countersigned by the President of the Republic and by the Prime Minister of the Republic of Croatia<sup>17</sup>. As for the president of the Supreme Court of Justice, similar to Belgium, “he is appointed and dismissed by the Croatian Parliament, upon the proposal of the President of the Republic, based on the prior endorsement of the plenary session of the Supreme Court of the Republic of Croatia and the competent committee of the Croatian Parliament. The President of the Supreme Court of the Republic of Croatia is appointed for a four-year term”<sup>18</sup>.

The Constitution of Denmark states in art. 57 that “Without the approval of the Parliament, no member of it can be charged or deprived of liberty, except in cases of flagrant crime”<sup>19</sup>, while the Constitution of the Hellenic Republic provides for the endorsement in art. 2, where it states that the draft laws that have the object of granting a pension and the conditions under which it can be granted can only be presented by the Minister of Finance and only after obtaining the endorsement of the Court of Accounts. Also, with reference to the Court of Accounts, art. 98 par. (1) letter e) stipulates that among the powers of the audit institution, it issues advisory endorsements regarding draft laws regarding pensions or the recognition of a service that gives the right to a pension, pursuant to Article 73, paragraph 2, as well as any other matters provided for by the law (...).” The Constitution of the Hellenic Republic also provides for consent, in the sense that “Except for cases involving the loss of office or full suspension, the disciplinary sanctions imposed on the elected bodies of the local administration are established only with the consent of a council made up of a majority of judges, in the conditions provided by law”. The French Constitution includes provisions regarding the fact that “Matters that do not fall within the scope of the law have a regulatory character. The normative provisions adopted in these matters can be modified by decrees issued after receiving the endorsement of the Council of State<sup>20</sup>”. “The Ordinances are adopted in the Council of Ministers, following the advice of the Council of State<sup>21</sup>” and “The draft laws are debated in the Council of Ministers, following the endorsement of the Council of State and are submitted to one of the two Chambers”<sup>22</sup>.

The above are just a few examples of the regulation of endorsements at the level of European states, which brought endorsements at the level of constitutional rank. This fact highlights their importance, regardless of their type, respectively, compliant or advisory endorsements.

#### 4. Special Cases of Endorsements in the Romanian Legislation—Relevant Cases from the Practice of Romanian Courts and the Court of the European Union

We have chosen a few categories of endorsements that we consider relevant and even defining for our approach through which we have proposed to campaign for a place distinct from the administrative operations of this type of act.

<sup>16</sup> Art. 99.

<sup>17</sup> Art. 103.

<sup>18</sup> Art. 119. The procedure is the same with regard to the chief prosecutor of the Republic of Croatia (art. 125).

<sup>19</sup> We find similar provisions in the Constitution of Finland, art. 114 “The decision of indictment is taken by the Parliament after obtaining an endorsement from the Commission for Constitutional Law regarding the illegal nature of the minister’s actions. Before the Parliament decides whether or not to indict a particular minister, the latter will be given the opportunity to provide explanations. When analyzing such a problem, the quorum of the commission is met when all its members are present”. The Constitution of France includes provisions similar to art. 65, in the sense that “The Section of the Superior Council of the Magistracy competent for judges makes proposals for the appointment of judges to the Court of Cassation, the First Presidents of the Court of Appeal and the presidents of the High Courts. The other judges are appointed with the approval of this section”.

<sup>20</sup> Art. 37.

<sup>21</sup> Art. 38.

<sup>22</sup> Art. 39.

- *Endorsements issued in the procedure for obtaining the building authorization (Law no. 50/1991<sup>23</sup>) and land development (Law no. 350/2001<sup>24</sup>):* We refer to some of those currently existing in the legislation, considering the resettlement that the future Code of urban planning and territorial development wants to implement, unifying the legislation and introducing the concept of “unique endorsement”. According to art. 2 par. (2) from Law no. 50/1991, “The building permit is issued on the basis of the documentation for the authorization of the execution of construction works, developed under the conditions of this law, based on and in compliance with the provisions of the urban planning documentation, approved and signed according to the law”. Also relevant are the provisions of art. 5 par. (1), according to which “The approvals and agreements established by the urban planning certificate are requested by the investor/beneficiary and are obtained from the competent authorities in the field before submitting the documentation for the authorization of the execution of construction works to the competent public administration authorities”.

There are numerous references to endorsements in Law no. 50/1991, but we have emphasized only two texts to highlight the importance of the endorsements in the procedure for issuing a building authorization, which, under no circumstances, can be qualified as simple formalities in the administrative preliminary procedure as they produce genuine legal effects.

Another special situation is that of the endorsements regulated by Law no. 350/2001, which in art. 35<sup>1</sup> par. (4) letter b) establishes “When issuing the building authorization by the competent public authority, in addition to the provisions of the urban planning documentation and the related local town planning regulations, the following aspects will be considered: b) the presence of some archaeological remains. The competent authorities issue the archaeological burden discharge Certificate or establish restrictions through the issued endorsement (. . .). So, here is a new type of endorsement that gives rise to obligations, thus producing full legal effects.

- *Endorsements issued in the case of community services of public utilities:* One of the normative acts that regulate such endorsements is Law no. 51/2006<sup>25</sup> of community services of public utilities, republished. The general nature of the provisions of this normative act should be noted, which establishes the obligation to hold the endorsements provided by the legislation in force. For example, art. 40, which refers to the granting of licenses in the field of public utility services, states that ANRSC<sup>26</sup> will pursue, above all, the cumulative fulfillment of the following conditions (. . .) holding the endorsements (. . .). It is true that the same article stipulates as a condition for the granting of a license and “knowledge of the normative acts that regulate the field of public utility services”, provisions that we appreciate to have a very general feature; the addressee does not have any indication of what kind of endorsements and what kind of normative acts regulate this vast field. But this is not our research topic. What we want to emphasize is the fact that the granting of a license, which is a real administrative act, includes a condition for the applicant to have the necessary approvals. So, it is a necessary condition and not an option, and the endorsement goes beyond the scope of simple administrative operations.
- *Endorsements regulated by Law no. 101/2016<sup>27</sup>:* Conditional advisory endorsements are mandatory, if the deficiencies have not been remedied and the contract has been concluded, it is cause for nullity of the contract (art. 58). The act of the contracting authority, according to the definition in the Law, is understood as any act, any operation that produces or may produce legal effects, the failure to fulfill within the legal term an obligation provided by the

<sup>23</sup> Regarding the authorization of construction works, republished in Official Monitor no. 933/13, October 2004.

<sup>24</sup> Regarding territorial development and urban planning, published in the Official Monitor no. 350/6, July 2001.

<sup>25</sup> Republished in the Official Monitor no. 121 of 5 March 2013.

<sup>26</sup> National Regulatory Authority for Community Services of Public Utilities (which includes water supply and sewerage, sanitation, public lighting and public transport).

<sup>27</sup> Regarding the remedies and appeals in the matter of awarding public procurement contracts, sectoral contracts, and works concession and service concession contracts, for organizing and functioning the National Council for the Resolution of Appeals.

*relevant legislation, the omission or refusal to issue an act or to perform a certain operation, in relation to or within an awarding procedure* (art. 3). We find, therefore, that the legislator gives a legal force to an endorsement, and the legality of the administrative act is conditioned by compliance with the matters stipulated in the endorsement. Moreover, the legislator speaks of an act of the contracting authority as any operation that produces or can produce legal effects, so it is obvious that it can no longer be a matter of simple administrative formalities.

- *Endorsement issued by the Court of Accounts:* According to art. 41 of Law no. 94/1992, regarding the organization and functioning of the Court of Accounts, republished<sup>28</sup>, the institution has the following attributions in terms of approval: *at the request of the Senate or the Chamber of Deputies, approves the draft state budget and draft laws in the field of finance and public accounting or through the application of which would result a decrease in revenues or an increase in expenses approved by the budget law and for the establishment by the Government or ministries of specialized bodies under their subordination.*

There are two types of endorsements: the first is only at the request of one of the Chambers and only in the two stated situations, and the second, by which the establishment of ministries or other specialized bodies under their subordination by the Government is conditioned, a situation which regulates a mandatory endorsement. Therefore, again, the absence of an act that goes beyond the scope of simple formalities, in our opinion, even producing legal effects, practically blocks the entire process. Of interest is the second type of endorsement: the text of the law being correlated with the provisions of art. 117 par. (2)<sup>29</sup> of the Romanian Constitution. The element of novelty is given by the Administrative Code, which introduces the notion of a *conforming endorsement of the Court of Accounts* in terms of the establishment by the Government under its subordination of specialized bodies, other than the ministries<sup>30</sup>, and in turn, the ministries can establish under their subordination specialized bodies under the same conditions<sup>31</sup>. So, with the adoption of the Administrative Code, an independent legal force was given to the endorsements issued by the Court of Accounts, its recipient being obliged to respect the content.

By comparison, the European Court of Auditors<sup>32</sup> issues endorsements when the other institutions consider it appropriate, but an endorsement is mandatory when the Council:

- Adopts financial regulations that specify the procedure for establishing and executing the budget and presenting and auditing the accounts;
- Determines the methods and procedure by which the EU's own resources are made available to the Commission;
- Establishes rules regarding the responsibility of financial controllers, credit officers, and accountants;
- Adopts measures to combat fraud.
- *Endorsements issued by the Chambers of Commerce:* The County Chambers of Commerce and Industry are empowered by the endorsements of Law no 335/2007—the Romanian Chambers of Commerce Law—to issue endorsements certifying the cause of force majeure, at the written request of the interested parties. Any legal person can activate the clause of force majeure and may request a force majeure endorsement in the case that it cannot fulfill its contractual obligations toward a partner due to an unforeseeable and irreplaceable event. The force majeure endorsement exonerates the party invoking the force majeure event from liability, in the conditions where

<sup>28</sup> In the Official Monitor no. 238/3 April 2014.

<sup>29</sup> <https://www.europarl.europa.eu/factsheets/ro/sheet/14/curtea-de-conturi> (accessed on 13 August 2023); for a detailed example of the opinion given by the European Court of Auditors see <https://www.ilegis.ro/eurolegis/ro/index/act/74222/lang/ro> (accessed on 13 August 2023)

<sup>30</sup> Art. 67, para. (1) of the Administrative Code adopted by Emergency Ordinance no. 57/2019.

<sup>31</sup> Art. 68 para. (1) of the Administrative Code.

<sup>32</sup> <https://www.europarl.europa.eu/factsheets/ro/sheet/14/curtea-de-conturi> (accessed on 13 August 2023). For a detailed example of the endorsement given by the European Court of Auditors see <https://www.ilegis.ro/eurolegis/ro/index/act/74222/lang/ro> (accessed on 13 August 2023).

the event is generated by circumstances beyond the will of the party, the fault of the party cannot be held, and it cannot be removed by it. The condition is that the party invoking force majeure must notify its partner of the force majeure event and then present the endorsement issued by the competent Chamber of Commerce. According to the information on their websites, the prices charged by the Chambers of Commerce for issuing such an endorsement for a large- or medium-sized enterprise is EUR 500 + VAT, so they are interested in issuing these documents favorable to the applicant. By reference to the conditions for issuing these notices, we consider that they represent a formality if the applicant pays their consideration.

- *Employment endorsements issued by the General Police Inspectorate:* This type of endorsement is regulated by Government Ordinance no. 25 of 26 August 2014, regarding the employment and posting of foreigners on the territory of Romania and for the modification and completion of some normative acts regarding the regime of foreigners in Romania<sup>33</sup>. Employment permits are requested by the employer, who must meet a series of conditions. The necessary documents and conditions for obtaining each type of employment permit (for permanent workers, posted workers, seasonal workers, etc.) can be found on the website of the General Inspectorate for Immigration<sup>34</sup>. After obtaining this endorsement, two rights arise that of the employer to conclude employment contracts and that of the future employee to work. This is another example where endorsements produce full legal effects and cannot be assimilated, under any circumstances, to simple administrative formalities, from our point of view.
- *Endorsements issued by the Legislative Council:* According to art. 1 paragraph (1) in Law no. 73/1993<sup>35</sup> for the establishment, organization, and functioning of the Legislative Council, it approves the normative projects to systematize, unify, and coordinate the entire legislation. The powers of the Legislative Council are mentioned in art. 2 and are stated to carry out the activity for which the Legislative Council was established, mentioned in art. 1, which refers only to the systematization, unification, and coordination of the entire legislation, and art. 3, where it is mentioned that an *endorsement is advisory*. The same situation is highlighted in the case of normative acts issued by the Government, where an endorsement retains its *advisory feature*. It is difficult to understand the intention of the legislator who imposed the need to request an endorsement but considered that the content is not mandatory for the issuer of the act. It is true that an assessment of the appropriateness of the content of the act belongs to the issuer, but the purpose of issuing an endorsement by the Legislative Council is incomprehensible in the context where through such an approach, the very attributions of the institution are devoid of content.
- *Endorsements issued by the Ministry of Youth and Sports*<sup>36</sup> to obtain legal personality: Art. 18 par. (1) of the law, provides that, among the attributions of the Ministry of Youth and Sports, there is also the one according to which it approves the establishment of sports structures, including registration as legal entities of professional sports clubs organized as joint-stock sports commercial companies and, respectively, withdraws the approval of their operation. Again, we are considering an endorsement that produces legal effects, the operation of a sports structure being conditioned by the existence of this Ministry of Youth and Sports endorsement. Also, art. 38 par. (1) stipulates that the national sports federations will be established only with the express approval of the Ministry of Youth and Sports.

<sup>33</sup> Published in the Official Monitor no. 640 of 30 August 2014.

<sup>34</sup> <https://igi.mai.gov.ro/obtinerea-avizului/> (accessed on 18 August 2023).

<sup>35</sup> Republished in Official Monitor no. 1122/29 November 2004.

<sup>36</sup> Pursuant to the Physical Education and Sports Law no. 69/2000, published in the Official Monitor no. 2000/9 May 2000.

Obviously, the national legislation includes a multitude of types of endorsements that produce or could produce legal effects, but we have chosen a few that we consider relevant for the present scientific endeavor.

At the European level, in the Treaty on the Functioning of the European Union<sup>37</sup> (TFEU), it is expressly mentioned in art. 288 the fact that *recommendations and endorsements are not mandatory*.

However, although most of the endorsements have an advisory nature, from the economy of the legal text that regulates them, we can observe the mandatory nature of some of them. Thus, we mention two cases that we consider relevant: the endorsement provided by art. 258 TFEU, according to which *“In case where the Commission considers that a Member State has breached any of its obligations under the Treaties, it issues a reasoned endorsement on this matter, after giving the State concerned the opportunity to present the observations. If the state in question does not comply with this endorsement within the deadline set by the Commission, it may refer the matter to the Court of Justice of the European Union”*<sup>38</sup> and the endorsement provided by Art. 218 par. (11) TFEU, according to which *“A Member State, the European Parliament, the Council, or the Commission may obtain the opinion of the Court of Justice regarding the compatibility of an expected agreement with the provisions of the Treaties. In case of a negative opinion of the Court, the respective agreement can enter into force only after its modification or the revision of the treaties”*. We note, therefore, the binding nature of the endorsements issued by the CJEU, expressly established by the Treaty.

On the other hand, the TFEU also provides for a multitude of endorsements that are not mandatory, among which we mention: art. 282 par. (5), according to which *“In the fields in which it has attributions, the European Central Bank is consulted on any draft act of the Union, as well as on any draft regulation at national level and can issue opinions”* and art. 304–305, which regulates the endorsement issued by the Economic and Social Council, this being *“consulted by the European Parliament, the Council or the Commission in the cases provided for by the treaties. The Committee can be consulted by these institutions in all cases where they consider it appropriate. It can also issue an opinion on its own initiative, in all cases where it deems appropriate. If it deems it necessary, the European Parliament, the Council or the Commission grant the Committee a deadline for it to present its endorsement (. . .) After the expiry of the deadline, the lack of endorsements does not prevent the proceedings”*.

Regarding the practice of the courts, it is quite diversified, as there is no unitary practice that qualifies the endorsement exclusively as an administrative operation that does not produce any legal effect.

A solution of the former Supreme Court<sup>39</sup> to qualify the technical endorsements issued on the basis of Decree no. 144/1958 as administrative acts was harshly criticized in the doctrine, considering that *the administrative act is only the construction authorization, because only this creates a new legal situation—the right to build* (Iorgovan 2005, p. 265). The discussion is topical, especially in the context of a reference decision<sup>40</sup> of the High Court of Cassation and Justice (HCCJ) issued in an appeal in the interest of the law, which held that also in the case of urban planning certificates, it is considered that *“they proceeded in accordance with the letter and spirit of the legal provisions those courts that allowed the exercise of legality control separately over the urban planning certificate by which the prohibition to build was ordered or which contains other limitations and if the contrary interpretation were to be accepted, in the sense that the urban planning certificate can only be censured within of an action filed against the building permit, it would follow that, in the situation where such a permit is no longer issued precisely because of the building prohibition established by the certificate, this act can no longer be subject to legality control*

<sup>37</sup> [https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0001.02/DOC_2&format=PDF) (accessed on 15 August 2023).

<sup>38</sup> See C-452/22, <https://curia.europa.eu/juris/document/document.jsf?text=aviz&docid=264640&pageInd ex=0&doclang=RO&mode=re.q&dir=&occ=first&part=1&cid=297907#ctx1> (accessed on 13 August 2023).

<sup>39</sup> Civil Section, Decision no. February 25/25, 1980, in RRD no. 10/1980, apud (Iorgovan 2005, p. 265).

<sup>40</sup> Decision no. 25 of 6 November 2017 regarding the interpretation and application of art. 6 para. (1) and art. 7 para. (1) from Law no. 50/1991 regarding the authorization of the execution of construction works, republished, with subsequent amendments and additions.

*in any way, and the applicant is obliged to bear the limitations related to the use of his property right, without recognizing his right of access to a court of law”.*

In another case, the Cluj Court of Appeal noted<sup>41</sup> that “through the endorsement it issues, the Legislative Council does not rule on the appropriateness of the envisaged legislative solutions (. . .). The Court notes that advisory endorsements are those opinions that the body that adopts or issues an administrative act of authority is obliged, according to the law, to request from other public administration bodies or specialized bodies but is not obliged to take into account their content. The adoption or issuance without request and without obtaining this endorsement leads to the nullity of the act, not because the said act was issued without taking into account the content of the endorsement, but because the endorsement was not requested, according to the law. “Without contesting the invoked legal provisions and the powers of the Legislative Council, the considerations of the court come to support our assertions, in the sense of the need for a legislative amendment, to recognize the real legal power of the endorsements issued by the Legislative Council”. It is true that the appreciation of the opportunity belongs exclusively to the issuer of the act, but given the powers of the Legislative Council, we believe that a reset of the legal provisions is necessary to give efficiency to these endorsements, in a context in which we are not talking about the factual content of the act but the correlation with the provisions laws to which it refers or under which it is issued.

With reference to the endorsement issued by the Ministry of Youth and Sports, our attention was drawn to a case<sup>42</sup> that, even if on merits it has a different legal issue brought to the court, in the context of the considerations the court, it was held that “The National sports federations will be established only with the express endorsement of the Ministry of Youth and Sports and in the case of the defendants there is no endorsement (. . .) so it is necessary to establish the nullity of these legal entities”. This is another solution that gives legal force to an endorsement, being mandatory both in form and content.

In the High Court of Cassation and Justice decision no. 13/2019, it was noted that “the authors of the works cannot rely on good faith to benefit from the recognition of the right of ownership under the conditions of art. 577 and the following from the Civil Code, as long as no one can claim ignorance of the law, in this case, Law no. 50/1991, which provides for the prohibition of building without authorization and the necessary legal endorsements, all the more so as they had the possibility of entering into legality by going through the procedure provided by special laws, after which they would have obtained the certificate of attestation of the construction of the building”<sup>43</sup>. Therefore, it is noted that the Supreme Court gave binding force to the endorsement, thus producing full legal effects, and its absence leads to the prohibition of building.

In another decision, the High Court of Cassation and Justice<sup>44</sup> held that “To be considered an administrative act, the conditions provided by the law must be met cumulatively, i.e., it must be a unilateral act issued by a public authority, under a regime of public power, in order to organize the execution of the law or of the concrete execution of the law, in order to create, modify or extinguish rights and obligations. Not all unilateral acts of public authorities are administrative acts, but only those that are issued under the regime of public power, to organize the execution of the law or its execution. In this case, the endorsement of 8 April 2008 granted by the Ministry of Economy, Trade and Business Environment (formerly the Ministry for Small and Medium Enterprises, Commerce, Tourism and Liberal

<sup>41</sup> Administrative and Fiscal Litigation Section, Civil Decision no. 34/09/02/2022.

<sup>42</sup> Civil decision no. 179, 30th September 2020, Cluj Court of Appeal, civil section.

<sup>43</sup> The decision of the High Court of Cassation and Justice no. 13/2019 regarding the review of the appeal in the interest of the law declared by the Board of Directors of the Bucharest Court of Appeal regarding the “interpretation of the provisions of art. 37 para. (5) from Law no. 50/1991 regarding the authorization of the execution of construction works, republished, with subsequent modifications and additions, in the sense of whether or not they constitute a legal impediment to the acquisition of ownership rights over the construction through the effect of artificial real estate accession”, was published in the Official Monitor no. 440 of 3rd June, 2019.

<sup>44</sup> Civil decision no. 1932/06 April 2012 apud (Bogasiu 2022, p. 76).

Professions) and the opinion of the National Chamber of Commerce of 20 May 2008, regarding the operation of the Chamber of Commerce and Industry of Turkish and Romanian Investors and Businessmen, are not unilateral administrative documents, in the sense of the definition of art. 2 par. (1) letter c) from Law no. 554/2004. In the specialized literature, the endorsement is defined as a point of view requested by the authority that is going to issue an administrative act, a procedural formality, prior to issuing the administrative act. The endorsement does not produce legal effects, so it does not change the existing legal reality by itself, it only contributes to strengthening the legal character of the administrative act. Therefore, the endorsement contested by the applicant, the Romania-Turkey Chamber of Commerce and Industry, does not have the character of a unilateral administrative act, but it represents a prerequisite for the operation of the Chamber of Commerce and Industry of Turkish and Romanian Investors and Businessmen. Administrative acts produce the legal effects that the issuing body of the act has in mind directly on those to whom they are addressed. In this way, they differ from administrative operations, which do not produce the legal effects intended by the one who carries them out, but the effects provided for by the law. The endorsement, regardless of whether it is advisory, optional, or mandatory, is not an administrative act, but a procedural operation prior to issuing the act. It does not produce independent legal effects”.

Regarding the practice of the European courts, there are cases settled by the Court of the European Union, but without any relevance in the present scientific approach<sup>45</sup>, in the context in which the Court of Justice of the European Union does not have jurisdiction over such litigations<sup>46</sup>.

## 5. Conclusions and Proposals

The most important conclusion that emerges from our short analysis is the need for a distinct regulation of endorsements, through a very clear delimitation from the administrative act and administrative operations, in the future Code of Administrative Procedure.

In the doctrine, an endorsement is defined as a point of view requested by the authority that is going to issue an administrative act, a procedural formality, prior to issuing the administrative act. An endorsement does not produce legal effects, so it does not change the existing legal reality by itself, it only contributes to strengthening the legal character of the administrative act.

Currently, in Romania, only an advisory endorsement has a constitutional determination, with special reference to the procedure for suspending the President of Romania from office. Endorsements, regardless of their form (compliant, advisory, optional), are not defined by a normative act. The draft of the Code of Administrative Procedure, which is currently being drafted, specifies that essential definitions should be included, such as those regarding administrative operation, endorsement, optional endorsement, advisory endorsement, compliant endorsement, agreement, etc.

Starting from this aspect, we appreciate that it is necessary to establish very clearly the legal nature of an endorsement, since, in many situations, this is an act that produces legal effects, so it must be given its rightful place in the Romanian legislation.

Considering an endorsement as a simple administrative operation will lessen its importance and turn it into a mere procedural formality.

Improving the activity of the public administration in Romania also requires the elimination of unclear aspects related to certain notions, such as endorsements.

<sup>45</sup> As an example, we mention case T-629/20 (Judgment of the Court, fifth chamber, dated 13 July 2022) and case T-283/20 (Cancellation of Delegated Regulation (EU) 2020/217, not yet settled).

<sup>46</sup> Art. 263 TFEU: “The Court of Justice of the European Union controls the legality of legislative acts, acts of the Council, the Commission and the European Central Bank, other than recommendations and opinions, and acts of the European Parliament and the European Council intended to produce legal effects against by third parties. It also controls the legality of the acts of the bodies, offices or agencies of the Union intended to produce legal effects towards the third parties”.

To reinforce this fact, through a comparative analysis of the Constitutions of some states in the European Union, we have emphasized the importance of endorsements at the level of the other countries, which regulated their legal regime through the fundamental law itself.

Although we have not identified any other relevant study in Romania to date that deals with the issue of endorsements, we express our hope that through this approach we can lay a foundation for the theory of endorsements, as we like to call it.

Regardless of the evolution of the legislation in Romania, we propose to continue researching this topic in a future study, completing the analysis with relevant doctrine and jurisprudence in the member states of the European Union.

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