

Revocation of administrative acts and the principle of legitimate expectation

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The power to revoke administrative acts is known to be a difficult subject, and has been deeply analyzed by Renato Alessi in his classic monograph on the matter (“La revoca degli atti amministrativi”).

More than a jurist, a thinker, he analyzes revocation from his position in the general theory of law, and, as Ortega Y Gasset writes about his own philosophical method, he is “approaching (the thematic nucleus) in concentric circles, of ever shorter and more intense radius, sliding through the spiral of a mere exteriority with an abstract, indifferent and cold aspect to a center of terrible intimacy” (“What is Philosophy?”).

According to the author, the power of revocation derives from the subject’s capacity to act (in this case, public administration [government]) that affects the effects of that act, which, in turn, gave rise to a legal relationship, which will be modified by revocation. It is necessary that the subject be the current owner of the relationship, whose legal effects it seeks to modify or extinguish. However, in addition to the issues related to the competence of the administrative body, it must still have this power of revocation. Reasons for revocation may relate to the erroneous assessment of circumstances at the time of the act or to subsequent changes that render the effects of the act contrary to the public interest. Or, still, to changing administrative and technical criteria that render obsolete the effects of the act to be repealed.

Thus, revocation does not derive from a flaw intrinsic to the act, but from extrinsic elements. The annulment of administrative acts, in turn, depends on such element, which directly affects the act, such as, for example, the incompetence of the authority that effected it. The effects are also diverse: revocation produces non-retroactive (*ex nunc*) effects, whereas cancellation produces retroactive (*ex tunc*) effects.

This overview is just like a narrow little window, which invites us to see the whole landscape that is seen in the distance (the importance of the work leads us to publish its translation in the near future).

In the monograph, however, a chapter on the principle of legitimate expectations is lacking, perhaps without much relevance in Italian law for the well-known and specific conception of legitimate law and legitimate interest.



Revocation of administrative acts and the principle of legitimate expectation

In any case, among us revocation must respect the legitimate expectations of those subject to the administration, that is, those who have taken concrete measures in their life in the face of the explicit or implicit guidance contained in the administrative act. Revocation, if inescapable because of the public interest, but when causing damages to individuals, should generate right to redress. If it does not cause damage, it must respect all the acts exercised and all legal relations generated on the basis of the administrative act to be revoked and which took place before the change of direction of the administration.