



Action of Tutela Against the Administrative Act Which Resolves the Direct Revocation at the Request of a Party*

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ABSTRACT This scientific article seeks to resolve the legal situations regarding the admissibility or inadmissibility of a tutela action against administrative acts issued in the event of a direct revocation. In this sense, it starts from a first premise regarding the possibility of filing a tutela action against administrative acts. In its resolution, it is necessary to clarify some preliminary questions that may focus on an answer to this question. In this order, the objective of this scientific document is to analyze the admissibility of a tutela action against the administrative act that resolves a direct revocation at the request of a party. This is done through the use of appropriate qualitative, hermeneutical, and documentary methodology, based on techniques that mention observation, bibliographic review, and documentary analysis. The results obtained consider a review of the grounds and reasons for using the action for violation of fundamental rights in the event of a direct revocation.

Therefore, the conclusion is that, despite the fact that the Constitutional Court has repeatedly ruled that the tutela action against administrative acts is inadmissible, since, according to its concept, they have different legal means to be challenged by ordinary mechanisms, such that constitutional jurisprudence considers that, despite the fact that the Colombian legal system has suitable instruments to protect fundamental rights, among which the tutela action stands out.

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1. Introduction

The constitutional mechanism for the tutela action against judicial decisions and administrative acts is extraordinary, and the legislature included it in the Constitution to correct potential failures that both the administrations and the legal system may commit, resulting in a violation of citizens' fundamental rights.

However, in various rulings, the Constitutional Court has established that the constitutional tutela action is a provision for the protection and defense of fundamental rights, with residual and subsidiary characteristics, in accordance with the provisions of the Colombian Political Constitution and Decree 2591 of 1991. Thus, in the present case, the admissibility of the tutela action against administrative acts related to the revocation of mandate is precisely what is involved.

In this regard, Section 2 of Article 93 of the Administrative and Contentious-Administrative Code mandates that direct revocation of administrative acts is invoked for the second reason, which is related to when they do not conform to the public or social interest or violate it.

Considering that the foregoing brings the following situation into the debate, from these perspectives, there is jurisprudential precedent that demonstrates that it is possible to use a tutela action. This is based on Ruling SU-116 of 2001 of the Honorable Constitutional Court, which established as a precedent the

possibility of invoking a tutela action against collective rights, provided there is some connection between a fundamental right and the collective right that has allegedly been violated.

It is noteworthy that in any constitutional judicial process, it can be proven that popular and class actions are not adequate and timely mechanisms to protect rights that affect the community. However, in this particular case, it is necessary to establish the specific characterization of the context under study, that is, to establish all the elements that in some way establish a specific approach to specific administrative acts, which are allegedly under the scope of cause No. 2 of Article 93 of the Administrative Code, as defined by Decree 2591 of 1991.

With these considerations in mind, the proposed objective is to identify the admissibility of the tutela action against administrative acts that decide on the direct revocation of specific administrative acts, ex officio by the public administration, according to cause 2a of Article 93 of Law 1437 of 2011.

Likewise, the structural legal scope is comprised of determining the admissibility of tutela actions against administrative acts, as well as establishing the existence of specific cases of direct revocation against specific administrative acts for the third cause of Article 93 of Law 1437 of 2011, in which fundamental rights and their treatment are affected. Jurisprudential.

Finally, it should be noted that the legality of the tutela action against individuals not involved in the process of creating the act revoked ex officio by the corresponding administrative authority is admissible, based on the third ground of Article 93 of the CPACA and its legal, jurisprudential, and doctrinal evolution.

2. Methodology

The approach of this article is qualitative and aimed at understanding, in its various conceptual, legal, and jurisprudential contexts, the phenomenon under study in the context of disciplinary administrative law. According to Hernández et al. (2020) and Martínez (2024), "qualitative research focuses on understanding and deepening phenomena, exploring them from the perspective of the participants or researchers, in a natural setting and in relation to the context."

In this sense, an analysis is made of the connotations that arise between the admissibility of the tutela action and the administrative act, in such a way that it leads to an understanding and explanation of the substantive and procedural norms in the face of facts that typify the admissibility of the tutela action against administrative acts and the direct revocation resolution of various kinds regarding the essence of administrative law.

The study method followed a hermeneutic approach based on the analysis and interpretation of the meanings of concepts and the way they relate to the explanation of the object of study, thus enabling logical and coherent argumentation of the deductions derived from the analyzed texts.

According to Suarez (2023), hermeneutic study has three stages: "subtilitas intelligendi or understanding, subtilitas explicandi or interpretation, and subtilitas applicandi or application." Subtilitas is understood as a useful method, a know-how that presupposes a particular mental and evaluative disposition.

The information required for the research was derived from the analysis of bibliographic and scientific documents of an investigative and legal nature on the different topics of the subject matter under study, in addition to legislative, doctrinal, legal, and jurisprudential sources.

3. Resulted y Discussion

The Administrative Act and its legal and jurisprudential connotations.

There are various definitions of the Administrative Act, and therefore it concerns several concepts of administrative management. This is also because they are sometimes stated based on the initiation or procedure of the Administrative Act, other times on its subject matter, and other times on its purpose. That is, they take into account the presence of certain characteristic factors unanimously contemplated by doctrine, without which the act either does not exist or corresponds to another class of actions.

However, it should be noted that, in relation to the concept of an administrative act, Díaz (2020) states that the Constitutional Court does not have a single definition, since in some cases it specifies that it is a manifestation of will, and in others it has stated that declarations of interest or knowledge can also be embodied in administrative acts. In its ruling 2017-06031 of 2020, the Council of State defines an administrative act in the following terms: this unilateral expression or manifestation of the will of the constituted administration, which creates, in a mandatory manner, a legal situation of a general, impersonal, or abstract nature, or of a subjective, individual, and concrete nature; that is, it is a decision capable of producing legal effects and, consequently, binding the subjects of the administration.

The aforementioned concept implies that the Administrative Act is a legal institution that expresses Public Administration and administrative law. It also contains the fundamental attributes of an administrative act, which are a declaration of will, administrative origin, and the projection of its effects in the legal sphere (Riascos, 2016).

From these perspectives, Colombian jurisprudence differentiates between general and specific administrative acts. In this regard, the Constitutional Court indicates that general administrative acts are those in which the normative assumptions are stated in an objective and abstract manner. Unlike the former, specific acts contain a specific and concrete decision, "which produce situations and create effects considered individually" (Riascos, 2016).

In this context, an administrative act constitutes a decision made by those who exercise administrative functions, which give rise to legal consequences. Rodríguez (2021) points out that there is not a single notion of an administrative act, but rather four distinct concepts, which include: the organic, jurisdictional, functional, and material criteria.

Among them, the functional or jurisdictional criterion is the predominant one in Colombia, which observes that every administrative act originates in administrative management, and the jurisdictional judgment, which alludes to the fact that every administrative act is subject to control by the Administrative Litigation Jurisdiction.

Validity and legality of the administrative act.

For an administrative act to be valid and effective, Restrepo and Vélez (2021), citing Ortega, state that "it must be taken into account that validity is a consequence of the act's compliance with the legal system, that is, that it respects legality and the requirements of law. Regarding effectiveness, this refers to the production of the effects of the act or its application to its recipient for the purpose of having effects on the latter."

Now, regarding the legality, finality, and enforceability of administrative acts, it should be noted that, according to Article 88 of Law 1437 of 2011 (the Administrative Code), administrative acts are presumed legal until they have been annulled by the Administrative Litigation Jurisdiction. Upon their decision, they are binding unless annulled by the Administrative Litigation Jurisdiction. The protection mechanism applies to administrative acts to protect fundamental rights, but with special regulations.

Thus, it is noted that administrative acts have two perspectives, which characterize them as general or specific and concrete. Regarding the latter, the Constitutional Court, in its ruling SU067/22, states that they correspond to the will and manifestation that the administration (entity) unilaterally directs for the purpose of creating, modifying, or extinguishing situations of a general or specific/concrete nature. Therefore, it is necessary that the Jurisdiction that must initially examine an administrative act corresponds to the Administrative Litigation Court and, therefore, in the first instance, one must resort to Administrative Law, which according to Vergara Mesa (2021), "is characterized by being a special discipline, being a recent law, it is an uncoded law, it is a jurisprudential law."

Defining elements of the administrative act.

Since the early 1970s, the Council of State has held that the definition of an Administrative Act can be approached from different perspectives (Rodríguez 2023). These are, from a formal legal normative point

of view, the act that emanates from the administrative body of the State; and, from a material point of view, meaning that an Administrative Act can be considered an Administrative Act, any decision of the Administration that contains measures of individual scope (a subjective act or a conditional act), with the exception of Jurisdictional Acts.

Also noted among the elements that make up the legal characterization is the one that is usually presented from a functional point of view, that is, accepting that an Administrative Act is one that falls under the rule of administrative law as opposed to the acts of individuals, which depend on private law.

In this order of ideas, the various definitions discussed above establish that the principle of an administrative act depends on the fulfillment of certain conditions. As Rodríguez (2023) points out, citing Dromi (1997), the existence of an administrative act depends on the fulfillment of several essential elements: jurisdiction, object, will, and form, which must coexist simultaneously in the manner required by the legal framework.

These conditions have been reviewed from the perspective of many authors and jurisprudence and are recognized as elements of validity of the act, which are interpreted differently from one country to another or at different times. According to Rodríguez (2023), referring to Council of State ruling 2017-06031 of 2020, the elements of an administrative act are: subject or jurisdiction, subject, object, purpose, motive, form, and will.

Revocation of Administrative Acts

Administrative acts arise from the voluntary demonstration of actions by administrations that generate legal implications and results. If these actions intimidate or violate fundamental rights, they are subject to analysis from the perspective of constitutional and regulatory norms.

It is worth noting that Colombia has two key actions to temporarily halt an administrative act: the action for annulment and restitution of rights; and the other, which can be invoked in exceptional cases through the tutela action. Given the relevance of its specificities, citizens prefer to invoke it when their rights are potentially violated, as they consider it the most effective, rapid, and available means to ensure that those rights are protected and guaranteed.

Furthermore, it should be noted that the revocation of administrative acts can be achieved in two ways: either directly, by the same official or body that issued the ruling, or by the administrative judge. The first method is known as the direct revocation of the administrative act, which is a legality control mechanism aimed at excluding from the legal system all administrative decisions that violate any of the grounds provided for in the legal system.

Specifically, Article 93 of the Administrative Code states: Administrative acts must be revoked by the same authorities that issued them or by their immediate superiors when their opposition to the Political Constitution or the law is manifest, when they are not in accordance with the public or social interest or violate it, and when they cause unjustified harm to a person.

Likewise, Article 97 of the Administrative Code prevents the Administration from revoking administrative acts of a specific type that have recognized a right or a beneficial legal status to an individual without its prior, express, and written approval. In this regard, it modified the previous provisions of the previous Code, Decree 01 of 1984.

The general rule is that administrative acts are irrevocable. However, revocation is exceptionally considered another autonomous administrative act that nullifies the first one issued by the same authority. According to García (2021), citing Méndez, it is an essentially unilateral administrative legal act of a derivative nature that totally or partially destroys a prior administrative act based on merit or legality.

Likewise, administrative acts can be revoked in different ways: by a court ruling, by an administrative act issued by the same body, or by a higher-ranking body. The initiative to revoke the administrative act can come from an interested party or from the administration itself through appeals.

It is also necessary to cite Article 97 of the CPACA, which states regarding the revocation of administrative acts: However, in accordance with the provisions of the aforementioned regulation, even if it has been acquired through dishonest or illicit means, the administration may not revoke the administrative act without the consent of the respective owner, since the regulatory structure prevents it, leaving the administration with the only option to prove that the conduct is illicit and try to have it temporarily suspended until the judge makes a final decision on its legality.

In this regard, the Council of State, Administrative Litigation Chamber, Fourth Section, in its judgment interprets Article 96 of Law 1437 of 2011, clarifying the effects of direct revocation. Similarly, the same body, in its second section, through a judgment broadly develops the content of Article 96 of Law 14, now 37 of 2011, in relation to the revocation of administrative acts. It clarifies doubts related to the power to revoke administrative acts, placing special emphasis on consent as a requirement for the revocation of administrative acts of a specific and concrete nature. This provision allows for the possibility of annulling an act not only by the hierarchical superior, who belongs to the same entity, but also by the functional superior, in cases where the authority, strictly speaking, does not have a hierarchical superior, but does have a functional superior due to the specific activity it performs (Díaz, 2020).

Now, regarding the opportunity for revocation, the corporation explains the meaning of Article 95 of the CPACA, highlighting: once the jurisdiction has been reached, until the administrator has been notified of the order admissible for the claim, the administrator may request the direct revocation of the administrative act at any time.

It also clarifies that once the historical act is notified of the claim for annulment of the administrative act, the authority loses the authority to revoke the administrative act directly or at the request of the interested party. Finally, it states that the administration must resolve the request for revocation within a maximum period of two months.

The residual and subsidiary nature of tutela has supported the Constitutional Court in the strict assignment of this mechanism to requests filed and based on Article 86 of the Constitution, given that the legal framework recognizes that those whose rights have been violated may seek to protect them through ordinary actions before authorities that are part of the jurisdictional body and whose function is also to protect fundamental rights.

It is worth noting that the Court has reiterated its judicial exercise when investigating tutela, since it is its duty to rigorously observe the residual or subsidiary nature of the constitutional action, since it could be inadmissible, as provided in Section 3 of Article 86 of the Political Constitution (Díaz, 2020).

Admissibility of the tutela action against administrative acts

Although an alternative protection instrument exists, the constitutional provisions of the tutela action establish that if the use of the usual mechanism does not obviate the cause of irreparable harm to the person entitled to the right, the tutela acts as a temporary means of protection. In this sense, the Constitutional Court has indicated that harm is irreparable when the following characteristics occur: imminence, severity, urgency, and non-deferrability (Aguirre, 2021).

In this regard, the same Court classifies them into the inadmissibility of the tutela action against an administrative act as a general rule and the exceptional admissibility of the tutela action against administrative acts. In this context, the rulings made by judges regarding the exceptional admissibility can be classified into three types: granting the tutela action when there is irreparable harm and it is granted as a temporary mechanism; Consent to the tutela action is granted when there is irreparable harm and it is granted as a definitive mechanism and the granting of the action due to the ineffectiveness of the ordinary means of control (García, 2021).

Thus, the tutela action is considered to be stipulated in Article 86 of the Political Constitution, regarding which Restrepo and Vélez (2021) point out that said action proves to be a very important instrument for achieving the protection of fundamental rights. However, due to the benefits of this instrument, it has

become a source of congestion for the different judicial offices in the country (García, 2021).

However, it is important to note that Decree 2591 of 1991 establishes the rules for resorting to the tutela action to protect fundamental rights within the Constitutional framework. Likewise, Law 1437 was enacted in the administrative legal system in 2011. The legislator's first part sought to regulate everything related to administrative procedures. For this reason, it established a series of prerogatives for the public administration and, in return, certain rights within the general administrative procedure and special administrative procedures.

It is worth noting that these prerogatives established some common rules, among which the direct revocation of administrative acts stands out. This revocation may be invoked by the recipient of the administrative act, as well as by the administration itself or by the competent authorities. This revocation has a dual connotation: prerogative-right (Restrepo, 2024).

According to the aforementioned law, Article 93 establishes three specific grounds for invoking this mechanism against administrative acts: first, when the administrative act is clearly contrary to the law and the Political Constitution; Second, in cases where the administrative act causes a disgraceful affront to a person; and third, when the administrative act contradicts or conflicts with the established social or public interest.

This last ground is understood to apply when the administration, regardless of its level, and for administrative procedures regulated by the Code of Administrative Procedure and Administrative Litigation, issues administrative acts that resolve the request for direct revocation ex officio, against individual, concrete, and specific administrative acts, and which, in turn, affect the rights of individuals who were not parties to the administrative procedure, whose category is higher under the Constitution, protected by the tutela (protection of rights) (Restrepo, 2024).

Likewise, the tutela action can be invoked as a primary mechanism not only in cases where there is no other judicial recourse to claim the rights that the petitioner believes have been violated, and is excluded from handling a general administrative act. It also applies to administrative acts of a specific nature.

For the Constitutional Court, this action is viable when fundamental rights are violated and, exceptionally, against procedural administrative acts when these have been issued in disregard of the guarantees provided in the legal system to uphold due process as a fundamental right of those handling the administrative procedure (Salamanca, 2021).

Additionally, Aguirre, citing Gutiérrez et al. al, considers the protection mechanism as a subsidiary, residual, and autonomous judicial action, aimed at allowing constitutional control of the actions or omissions of all public authorities and, exceptionally, of individuals. It may be filed by any person for the prompt and effective defense of fundamental rights when this is urgent to avoid irreparable harm, or when there is no other means of judicial defense that serves such purposes.

However, taking into account that the constituent process established the convenience of creating the Constitutional Court to entrust it with the protection of the preeminence of the 1991 Constitution and to review decisions concerning the protection of constitutional rights, said institution has determined that damage is irreparable when the following characteristics exist: imminence, gravity, urgency, and non-deferrability (Rodríguez, 2023). Inadmissibility as a general rule in protection proceedings against administrative acts. In accordance with the previous section, the inadmissibility of protection proceedings against administrative acts is generally upheld, taking into account that the Constitutional Court indicates that it is not admissible to challenge the validity or legality of administrative acts. This is because the residual and subsidiary nature of this constitutional mechanism imposes on citizens the reasonable burden of first resorting, through the respective means of control, to the administrative litigation jurisdiction (Rodríguez, 2023). Furthermore, given the unpredictability of the protection proceedings against administrative actions, the judicial authority will determine the actions that can be taken before the ordinary courts in situations that are consistent with the challenge made to certain administrative acts (Montalvo, 2020).

Exceptional Admissibility of Protection Against Administrative Acts

It is considered that, as stated in the previous section, regarding the inadmissibility of protection against administrative acts, constitutional jurisprudence, in accordance with what has already been noted regarding the admissibility of protection, the admissibility of the mechanism may apply exceptionally and temporarily in three specific cases: granting protection in the event of irreparable harm as a temporary mechanism; granting protection in the event of irreparable harm as a definitive mechanism; and granting protection due to the ineffectiveness of the alternative means of protection (Restrepo, 2024).

In this sense, in assessing the exceptional admissibility of protection against administrative acts, according to the Court, the judge must take into consideration whether the person seeking protection is defenseless and declared to be in a weak condition. These conditions may justify different treatment. If the person seeking protection does not present conditions of vulnerability, they may seek and receive the application of the ordinary mechanism (Vergara, 2021).

Thus, the effectiveness of the protection ordered in the tutela ruling, by decreeing the suspension of the execution of the act, only protects the right holder making the claim for protection, unlike the temporary interruption of the administrative contentious process, the effectiveness of which applies to all legal situations regulated by the ruling (Salamanca, 2021).

In this regard, as has been pointed out in other rulings of the Constitutional Court, the tutela action is a system of coverage and protection of fundamental rights, of a merely residual and subsidiary nature, as established by the Colombian Political Constitution and Decree 2591 of 1991.

These situations have been specifically addressed throughout this document and therefore lead to greater clarity regarding the admissibility or inadmissibility of the tutela action that can be undertaken against administrative actions in which there may be a possibility of violation of fundamental rights (Salamanca, 2021).

4. Conclusions

There are several concepts regarding the admissibility of the tutela action against the administrative act aimed at resolving the direct revocation. Despite the fact that the Constitutional Court has repeatedly ruled that tutela actions against administrative acts are inadmissible, since, according to its understanding, these acts have different legal means of being challenged through ordinary mechanisms. Thus, constitutional jurisprudence considers that, although the Colombian legal system has adequate instruments to protect fundamental rights, among which the tutela action stands out, it must be implemented in potential situations. This does not apply in all cases against administrative acts, taking into account that the subsidiarity and residuality of the mechanism in question are present in these cases. In this regard, Rada and Serpa (2022) specify that the application of a causality regime regarding the admissibility of a tutela action indicates that, although the operational context of the request varies, the admissibility of a tutela action against an administrative act is always conditioned on proof of the subsidiarity of the action, the imminent harm to fundamental rights, and the ineffectiveness of ordinary judicial procedures.

In this regard, it is important and necessary to review the grounds for admissible tutela actions against administrative acts, especially those of a general nature. Such reviews must be conducted restrictively, since such approval empowers the Court to exercise powers that do not correspond to it and, on the contrary, generates inconvenient results against fundamental rights, with respect to the decisions of the Court of Closure, violating the right to equality and the principle of legal certainty.

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