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SCHOLARLY VIEWS ON LEGALLY NON-EXISTENT ADMINISTRATIVE ACTS IN SERBIAN ADMINISTRATIVE LAW

Abstract: The paper gives an overview of Serbian administrative law scholarship regarding legally non-existent administrative acts. After the introductory remarks, the paper offers a concise overview of the origins and evolution of the theory of legal non-existence in administrative law, followed by an analysis of the perspectives of Serbian legal scholars on this matter. I conclude that, despite the influence of French legal thought and the development of an original Serbian legal theory, the concept of legally non-existent administrative acts has not gained traction in Serbian administrative law scholarship. According to the prevailing view, which is also reflected in the current state of legislation, what is referred to as a non-existent legal act is not an administrative act and cannot be considered a distinct category thereof. In other words, the concept of legally non-existent administrative acts is deemed redundant alongside the existing category of null-and-void administrative acts.

Keywords: administrative act, theory of non-existence, legally non-existent administrative act, legality, legal certainty

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1. Introduction

The legal foundation of an administrative act, as one of its constitutive features, implies that the act must be issued in compliance with the law, its form and content must be prescribed by the law, the procedure for its adoption must be regulated by the law, and its legality must be subject to judicial review (Milkov, 1997; Vasiljević & Vukašinović Radojičić, 2019). Accordingly, there is a presumption of the legality of an administrative act — which encompasses both the presumption of its legal and technical correctness, as well as its appropriateness — until it is declared illegal by the competent authorities in the appropriate procedure removed from the judicial system (Lilić, Kunić, Dimitrijević & Marković, 1999).

Although the logic of the judicial system requires that all legal acts be legally valid, administration, as a human activity, may lead to the issuance of administrative acts that contain errors (Milosavljević, 2017). Such administrative acts are referred to as erroneous administrative acts and their existence within the judicial system is contingent upon the gravity of the error made during their adoption. Erroneous administrative acts can be classified into flawed (containing factual or technical errors) and unlawful (containing legal errors). Unlawful administrative acts can, in accordance with the nature (type) of the error, be further classified into illegal and invalid acts, with illegal acts, depending on the severity of the error, being categorized as voidable and null-and-void administrative acts.

In administrative law scholarship, there is also mention of a particular type of act that contains errors of such nature and severity that they preclude the possibility of its legal existence. French legal scholarship has coined the term "non-existent acts" (*actes inexistants*) for such acts.

This paper aims to explore the key perspectives on legally non-existent administrative acts within Serbian administrative law scholarship.

2. The theory of non-existent administrative acts (the so-called theory of non-existence)

In some countries, particularly in judicial practice and legal scholarship, the term "non-existent acts" is used to refer to legal acts that are, in fact, not legal. This term is inherently contradictory, as is the concept it seeks to describe.

The concept of the legal non-existence of acts originates from Roman law and was first systematically developed as the so-called theory of non-existence by Karl Salomo Zachariae in the early 19th century, within the field of private law (Tomić, 1999a). This concept was integrated into French administrative law through judicial practice in the second half of the 19th century. The goal was to enable not only administrative courts but also ordinary courts to assess the legality of administrative acts marked by significant errors. This theory was popularized within administrative law scholarship by Édouard Laferrière in the late XIX century, as he sought to introduce the most severe form of administrative dysfunction — distinct from nullity — characterized by lawsuit-initiated court intervention within a fixed timeframe.

Acts involving gross, particularly private, usurpation of power are considered a typical form of non-existent administrative acts (Rivero, 1980; Chapus, 1985). Interestingly, contrary to the prevailing view in French legal scholarship, the Council of State declares acts of private usurpation of power to be null-and-void, rather than legally non-existent (C. E., 20. I 1911, *Naudet*).

According to French court practice, legally non-existent administrative acts are those that involve a gross and serious error, whether in relation to the authority issuing the act, its subject matter, or its content. The first group of acts includes appointment acts that place an individual into public service — not for the position they are meant to occupy, but rather to allow them to perform a different function or to grant them specific privileges (C. E., 30. VI 1950, *Massonnaud*); acts that disregard the age limit for public officials (C. E., 03. II 1956, *Fontbonne*), violent administrative behavior (*voie de fait*) during enforcement (T. C., 27. VI 1966, *Guigon*); acts that represent a gross intrusion by the administration into the domain of the judiciary (C. E., 31. V 1957, *Rosan-Girard*).

The second group includes acts with an undefined or unclear subject matter (T. C., 06. VI 1934, *Consorts Durand*; C. E., 22. VI 1931, *Munio*) and acts with nonsensical contet (T. C., 27. VI 1966, *Guigon*).

The Council of State does not qualify such an act as illegal and does not annul it, but rather states that it is null-and-void and without any effect or that it is null-and-void and has not even come into existence (Breban, 2002). The key difference compared to null-and-void acts lies in the absence of any time limit for declaring their non-existence. The illegality of a non-existent act can be determined at any time — the administration may remove it at any moment and the court may rule on it regardless of any time limit. Such acts, regardless of their subject matter, do not establish rights.

The presumption of legality does not apply to legally non-existent administrative acts, as it is assumed that such acts do not legally exist (Dimitrijević, 1963). Citizens are not obligated to comply with such acts and may ignore them; however, it is advisable for those whose rights and interests are affected, for the sake of their own legal certainty, to initiate proceedings for their review before the competent court.

Judicial practice has not yet firmly established a stance on legally non-existent administrative acts and judges only refer to the theory of non-existence in exceptional cases, when ordinary legal recourse is inadequate due to the expiration of the time limit (Breban, 2002). Therefore, the theory of non-existence in France appears to be more significant in theory than in practice.

3. Fundamental viewpoints in Serbian administrative law scholarship

3.1. Mihailo Ilić

In defining legally non-existent acts, Mihailo Ilić (1998) starts from the premise that a legal act is a declaration of will through which legal authority is exercised to produce legal effects. He further concludes that every legal act presupposes legal authority, with the declaration of will serving merely as the exercise of that authority (p. 179). The key elements of his teaching are the declaration of will and legal authority (Ilić, 1998). If either of these elements is absent, the act in question is deemed

legally non-existent; an act issued without legal authority constitutes an act of usurpation of power. If, however, both the declaration of will and legal authority are present, but the will is improperly expressed or the authority is misapplied, the act in question is considered irregular, as it stems from an overextension of authority.

Ilić (1928) later revised his stance on the usurpation of power by proposing that any lack of jurisdiction on the part of administrative officials signifies an absence of legal authority; however, this does not necessarily constitute usurpation of power. When an administrative official acts beyond the jurisdiction of administrative bodies and encroaches upon the domain of judicial or legislative authority, the act in question constitutes an act of usurpation of power. However, if an administrative official encroaches upon the jurisdiction of another administrative official, the act constitutes an overreach of power. Yet, if the lack of jurisdiction is so clear that no reasonable doubt can arise, such an act may be deemed legally non-existent. Ilić concludes that, accordingly, an administrative act should be considered legally non-existent if it is issued either in the complete absence of legal authority or based on authority that does not belong to administrative officials in any capacity (p. 138).

Ilić (1928) classifies legally non-existent acts as irregular acts and notes that their irregularity is so profound that, consequently, they do not constitute legal acts at all (p. 137). However, he distinguishes between them in terms of their legal effect. While an irregular administrative act, despite its irregularities, still produces legal effects, its irregularity can serve as grounds for its annulment (p. 138). In contrast, a legally non-existent administrative act, by virtue of its non-existence, cannot produce any legal effect (p. 138). According to Ilić, such an act does not need to be "annulled" (p. 138), and any interested party may invoke its non-existence at any time (Ilić, 1998). An individual affected by such an act is not required to acknowledge it and may act as though it had never been issued (p. 138).

In addition to the act mentioned above, by which an administrative official exceeds their authority and steps into the domain of judicial or legislative power, Mihailo Ilić (1928) cites the following as examples of legally non-existent acts: 1) an act by a person who does not hold the status of an administrative official; 2) an act granting approval for legal

acts that, according to the law, do not require any (e.g., a decision by the Minister of Finance approving the regional budget after the deadline has expired), an act made without the necessary approval from higher or supervisory authorities, and an act by a collective body whose election was annulled as irregular before the act was adopted; 3) an act by the President of the Republic that lacks the countersignature of the competent minister.

An illustrative case of a legally non-existent act due to the absence of legal authority, as discussed by Ilić (1928), can be found in Serbian judicial practice involving a minister who issued an act dismissing a civil servant five days after his death. Remaining consistent with his teaching of legal authority, Ilić (1928) explains the qualification of such an act as legally non-existent by suggesting that, in the event of the widow of the deceased (dismissed) civil servant failing to file a lawsuit, she could regard the act as never having been issued and seek the recognition of her right to a family pension. If her right were not recognized, she could initiate an administrative dispute at any time, with the State Council being required to determine that the act of dismissing the deceased civil servant was legally non-existent and grant the widow the right to a pension (p. 140). On the other hand, if the act of dismissing the deceased civil servant were considered irregular, and no annulment lawsuit were filed, such an act, despite its irregularities, would retain its characteristics as an administrative act and continue to produce its effects. This would mean that the widow would be denied the right to a family pension.

3.2. Laza Kostić

Laza Kostić (1935) classifies irregular administrative acts based on the type and severity of their deficiencies, distinguishing a separate category for "legally non-existent acts" alongside flawed, annulable, and null-and-void acts (pp. 489-490).

However, in defining these acts, contrary to the previously outlined classification that includes "legally non-existent acts" as a type of irregular administrative acts, Kostić (1935) denies such acts the status of an administrative act by stating that non-existent acts (*actes inexistantes*) are merely apparent acts — they may resemble administrative acts, but

in reality, they are not and cannot be considered as such. They are a fiction, a mere chimera of administrative acts (p. 491). This contradiction becomes fully apparent in the statement that *legally non-existent* or *absolutely invalid* acts are those *administrative acts* (italics added by D.S.) that could in no way have produced their legal effects (p. 493), given that legal effect is one of the defining characteristics of an administrative act as a legal act (Kostić, 1936). Commenting on *Vales's* warning about the logical inconsistency of the term "non-existent act" (since the attribute negates the noun), Kostić (1936) explains that, indeed, at first glance, such an expression appears to be a *contradictio in adjecto*: an act represents a reality — how can a reality not exist? But this case concerns legal non-existence and the non-existence of an administrative act, rather than just any act. There is something external that the law does not recognize or endow with legal significance. An act exists without legal effect — therefore, it is neither a legal nor an administrative act. Legally, these are non-existent acts (p. 243, fn. 1).

It seems that this position would gain clarity with the remark that it concerns "so-called" legally non-existent administrative acts — i.e., acts that, due to the absence of legal effect, do not possess the characteristics of an administrative/legal act. However, in the interest of legal certainty, they are assumed to have the status of an administrative act so that they can be annulled.

Laza Kostić (1935) further explains that the Germans refer to such acts and similar ones as non-effectuating acts or acts without effect (*unwirksame Akte*) (p. 493) and emphasizes that they should be distinguished from acts that cannot produce effect due to certain factual obstacles, such as the expulsion of a foreigner from the country when no neighboring country is willing to accept them (p. 493).

Kostić (1935) identifies legally non-existent acts in various acts of individuals who have usurped power: 1) acts of a private individual (referred to as Köpenick acts);[2] 2) acts issued by a dismissed or retired of-

[2] A cobbler put on a captain's officer uniform, assumed command of a military unit, closed the municipal administration in the Köpenick district of Berlin, took money from the treasury, and issued a series of legally meaningless orders, all of which constituted legally non-existent acts.

ficial, or a removed public body, with the clarification that this applies after their dismissal, as until dismissal they are considered a de facto official whose actions, due to third parties, carry legal significance (p. 494); 3) any action of a public body that exceeds the scope of its primary function (an act issued by a member of a legislative body or a judge).

Laza Kostić (1936) concludes that legally non-existent acts should not be deprived of force by a special annulment (p. 239).[3] However, he notes that in practice, such acts are often annulled when there is uncertainty about whether they are legally non-existent or null-and-void, or when a legally non-existent act is presented in a way that might lead an individual to believe that it could produce legal effects.

3.3. **Nikola Stjepanović**

Nikola Stjepanović (1978), in his classification of illegal administrative acts into voidable (annulable) and null-and-void, highlights that only specific types of illegality result in nullity. Null-and-void resolutions produce legal effects only until the competent authority declares them null-and-void, which can be done at any time. The party must comply with the resolution until it is declared null-and-void, provided it has become enforceable.

Stjepanović (1978) holds that an act of usurpation of power is legally non-existent and the party may disregard it without legal repercussions, with no need for the competent authority to declare such act's non-existence.

3.4. **Slavoljub Popović**

Popović, Petrović, and Prica (2011) also examine the issue through the lens of the distinction between voidable (annulable) and null-and-void administrative acts.

[3] Authors who compare the flaws of administrative acts to diseases in the human body depict null-and-void acts as stillborns and legally non-existent acts as mannequins, or cardboard dolls. In the case of stillborns, the death must be established, while for the mannequin, it is unnecessary to state that it is in fact not human (p. 239).

Popović et al. (2011, p. 199) state that in French legal doctrine, legally non-existent acts are those that contain an error more severe than one that would lead to the nullity of the act. Neither French legal doctrine nor judicial practice has yet established a clear distinction between null-and-void and legally non-existent administrative acts. In one interpretation, a "legally non-existent act" is one that never existed and can be annulled without any time limitations. In another, "non-existence" denotes an exceptionally severe illegality — the highest degree of nullity, which creates additional confusion within the theory of "legally non-existent" administrative acts.

Popović et al. (2011), in their critical review of the aforementioned theory, question the point at which the severity of irregularity transforms an act from being null-and-void to legally non-existent. They note that French legal doctrine considers an act to be legally non-existent when it involves a severe violation of authority, i.e., usurpation of power. Ultimately, the authors go on to conclude that there is no need for the concept of 'legally non-existent' administrative acts in addition to the notion of null-and-void administrative acts (p. 200).

3.5. **Pavle Dimitrijević**

In his textbook, Pavle Dimitrijević (1983) classifies illegal acts based on the severity of their legal defects into: 1) voidable administrative acts containing minor legal flaws, and 2) null-and-void administrative acts containing more serious defects that permanently affect the validity of such acts. He defines nullity as the consequence of the most severe forms of illegality that can arise when issuing administrative acts, without even addressing the concept of legally non-existent administrative acts.

However, Dimitrijević (1963) addresses comparative legal experiences with legally non-existent administrative acts in another part of his work. The summary of his report is as follows:

a) *France.* Legally non-existent acts are associated with acts of usurpers and are classified as absolutely null-and-void administrative acts (*actes inexistants*). As such, they cannot be subsequently validated

and the administration can at any time declare their non-existence, i.e., their nullity (p. 39). They most commonly appear in the form of: an act of an administrative body resolving a dispute within the jurisdiction of the court; an act issued by a person without the authority to decide; an act issued by one minister instead of another; and an act with an obvious illegality. As Dimitrijević (1963) notes, the legal effect of such acts is limited to the following: no one is required to comply with them; a lawsuit filed against such an act before the State Council is not a claim for abuse of power and legal representation is not required; acts issued in execution of legally non-existent acts are themselves legally non-existent; the issue of non-existence can be determined by regular courts and, since an obvious illegality is in question, they are not required to treat it as a prejudicial matter and the enforcement of such an act constitutes *voie de fait*.

b) *Germany*. Illegal administrative acts are classified into: null-and-void administrative acts (*nichtige Verwaltungsakten*) voidable administrative acts (*aufhebbare Verwaltungsakten*) which are also referred to as overturnable administrative acts (*anfechtbare Verwaltungsakten*) (Dimitrijević, 1963). These should be distinguished from so-called legally non-existent administrative acts, which, drawing on Ernst Forsthoff's perspective, he describes as acts that German law does not want to classify under a specific technical term, because they are not administrative acts at all but private actions, as defined by criminal provisions (p. 49).

3.6. Ratko Marković

Ratko Marković (1995), in classifying erroneous administrative acts, mentions that legally non-existent administrative acts are also discussed in legal theory. Such acts are an expression of usurpation of power and originate from a subject who has blatantly usurped power that does not belong to them by any means (p. 220). They cannot be null-and-void because they do not exist at all, so the authority engaging in their review will not declare them null-and-void, but rather legally non-existent. He goes on to coclude that legally non-existent administrative acts lack even factual existence, in contrast to null-and-void acts, which, though factually existant, have no legal validity (p. 220).

3.7. **Bogoljub Milosavljević**

In his classification of erroneous acts, Bogoljub Milosavljević (2017) also mentions the theoretical possibility of a distinct category of illegal administrative acts — legally non-existent administrative acts. Drawing on dominant theoretical viewpoints, he observes the following key points: *legally non-existent administrative acts* are more akin to a theoretical construct than a reality, and while the law does not explicitly mention them, their existence is not impossible. These would be supposed, rather than actual, administrative acts, as they fail to meet even the basic requirements necessary to qualify as legal acts. These are merely asserted to be administrative acts, but in reality, they cannot qualify as such. An example would be the usurpation of power by a private individual, unauthorized to issue acts, who claims them to be administrative acts. Such acts do not legally exist and therefore cannot produce any legal effects. If such an act does appear, it should, according to prevailing opinion, be annulled in the interest of legal certainty (p. 258).

3.8. **Dragan Milkov**

Milkov and Radošević (2021) begin their perspective on legally non-existent administrative acts with a brief overview of French law and legal doctrine (*Jacqueline Morand-Deviller*, *Pierre Bourdon*, *Florian Poulet*, *Gay Braibant*): obvious and most severe errors have led to the establishment of a distinct category of administrative acts known as legally non-existent acts; The Council of State determines that such acts lie outside the law and produce no legal effect, without classifying them as illegal; unlike illegal administrative acts, which can be annulled within a specific timeframe, the non-existence of an administrative act can be established at any time.

Milkov and Radošević (2021) fully agree with Ivo Krbek's view that, in comparison to French law, there is no need to distinguish legally non-existent acts in legal systems that already have a division between null-and-void and voidable administrative acts. They argue that adding such a category does not introduce anything new, but rather creates further confusion. They note that attempts to distinguish legally non-exist-

ent acts from null-and-void acts rely on the contentious differentiation between those that exist legally, those that exist factually, and those that do not even have factual existence. They raise the question of how the criterion of 'factual' and 'legal' existence would apply to voidable acts and how they would differ from null-and-void administrative acts (p. 9, fn. 47).

In an effort to clarify the matter, Milkov and Radošević (2021) assert that the focus should not be on distinguishing between what exists legally vs. factually. Rather, the key point is that what is referred to as a "legally non-existent act" is not an administrative act, and as such, it cannot constitute a separate category within them. If what is referred to as a "legally non-existent administrative act" has legal relevance, as it may, then it constitutes a different legal fact, one that leads to different legal consequences. While this fact may not establish administrative legal relationships, it could give rise to some other legal relationships. A legal fact that is not recognized under administrative law and does not qualify as an administrative act does not necessarily have to be legally irrelevant or without value (p. 9). They support their position by referencing Forsthoff's conclusion that the acts of power usurpation by the shoemaker in the well-known Köpenick case do not constitute administrative acts (not even null-and-void ones), but rather actions of a private individual that could lead to criminal consequences (p. 9, fn. 48).

3.9. Zoran Tomić

Zoran Tomić is the first legal scholar, not only in Serbian but also in Yugoslav administrative law, to develop a comprehensive and affirmative theory on legally non-existent administrative acts.

Based on the results of his research, Tomić (1999b) proposed a draft of a (then "Yugoslav") legal theory on legally non-existent administrative acts, which, in its concise form, could be presented as follows:

1) Illegal administrative acts in Yugoslav law could be divided into: a) "relatively voidable" administrative acts, which would encompass the legal grounds for annulment of decisions based on appeals and for annulment and revocation of decisions through official supervision; b) "absolutely voidable" administrative acts, which would include most

cases that the Administrative Procedure Act (APA) classifies as null-and-void; c) "null-and-void" administrative acts, which he considers legally non-existent administrative acts and which would include two cases that the APA classifies as null-and-void: (1) when a decision in the administrative procedure concerns a legal matter belonging to an entirely different (non-administrative) legal function, particularly a judicial one, and (2) a decision that is factually impossible to enforce;

2) The legal non-existence of an administrative act arises from severe, "prior," and extreme legal defects. Consequently, their recognition and formalization must be broadly framed and considerably simplified due to the significant distortion such acts cause, impacting individuals, the legal system, and particularly legal certainty. The declaration of their non-existence, when required, should be strictly declaratory (p. 171).

3) Cases of legally non-existent administrative acts may or may not be prescribed by law. Their foreseeability would be addressed through the application of *de plain droit*, complemented by appropriate judicial development and refinement, all while respecting certain doctrinal principles (p. 171);

4) A synonym for a legally non-existent act is a legally null-and-void act, as both linguistically and conceptually it refers to something that has never been legally born and therefore bears no legal significance (p. 171). However, this legally non-existent entity may resemble an administrative act, imitate it, and create factual consequences that sometimes require a legal response (p. 171);

5) *The legal non-existence of an administrative act, according to the French concept, resembles the legal ineffectiveness of an administrative act (the so-called absolute nullity), as interpreted by Austrian judicial practice and the German statutory nullity of an administrative act* (italics added by Z.T.) (p. 171);

6) The types of legally non-existent administrative acts are: a) incomplete acts either in terms of their linguistic/legal formulation or in the procedural/legal finalization ("in preparation"); b) a legally nonsensical or unintelligible act; c) a factually unenforceable act; d) the private usurpation of administrative-public power; e) a clear and unequivocal administrative encroachment upon judicial, legislative, or another state

function; f) a clear and particularly serious constitutive defect in terms of both form and legal validity of the act;

7) The legal framework governing legally non-existent acts rests on the following key principles:

(a) without the presumption of legality — legally non-existent administrative acts could be disregarded by both the administration and citizens. However, any active resistance to their enforcement would be at the risk of the individual against whom the act is directed;

(b) the non-expiry of requests for legal determination, as well as the determination of the legal non-existence of an administrative act — anyone could at any time submit a request to clarify the nature of some questionable administrative legal action;

(c) the possibility for anyone to turn to any court, both administrative and non-administrative, with jurisdiction *ratione loci* to seek legal protection from legally non-existent acts. As soon as an "appropriate request" is presented to it, the court would be authorized and obligated to determine the legal (non)existence of the act in an expedited procedure. This type of request would involve the introduction, following the model of German law, of a specific lawsuit to determine the legal non-existence (legal nullity) of an administrative act, that is, a false or illusory administrative legal action.

(d) the significance and purpose of the relevant court ruling regarding legal non-existence lies not in a judgment on a legal issue, but rather in a ruling on a factual matter;

(e) The legal consequences of establishing the legal non-existence of an alleged administrative act would be: providing appropriate compensation to the victims and determining the liability of the perpetrator;

(f) the list of types of legally non-existent acts should not be closed by law. Courts should have the flexibility to develop, expand, and interpret it, while being careful not to overstep into the mostly precisely defined realm of voidable acts (both absolute and relative). Some reasons for legal non-existence would be self-evident, without the need for legal or judicial recording (for example, an "administrative decision" issued by the competent authority in which the operative part of the decision is omitted — legally null);

8) The theory of legally non-existent administrative acts is built upon the three key components of legal life: academic perspectives that offer theoretical justifications; legislation that should define the essential elements and related concepts concerning legal deficiencies of administrative acts, as well as certain typical cases of initial legal irrelevance of such acts; and judicial practice, which is tasked with refining and expanding the theory of non-existence in practical terms, especially in interpreting ambiguous cases.

Finally, Tomić (1999b) concludes:

In brief, legal non-existence is not simply a degree of unlawfulness or illegality (invalidity) of an administrative act. Rather, it refers to a factual condition in which there is an insufficient amount of preparatory legal and administrative substance — potentially misleading on the surface — which, due to insurmountable prior normative barriers, prevents the legal formation of an administrative legal act, and as a result, consequently, any of its legal effects (p. 186).(p. 186).

4. Conclusion

Despite the significant influence of French legal thought, the ideas of the theory of legally non-existent administrative acts did not take root in Serbia. Such acts were not recognized in the legislation of Serbia, whether during its periods of sovereignty or as part of Yugoslavia. A review of judicial practice may reveal certain "acts" that, under the standards of French judicial practice and legal doctrine, could be deemed "legally" non-existent. However, Serbian courts have consistently annulled such acts rather than recognizing their non-existence.

With few exceptions, Serbian administrative law scholars have not undertaken a comprehensive analysis of the issue of legally non-existent administrative acts. Aside from the reflections of Mihailo Ilić and Laza Kostić in the early 20th century, Zoran Tomić was the only scholar to undertake a more in-depth study of legally non-existent administrative acts at the end of the XX and begining of the XI century. His work presents a well-conceived, thoroughly argued, and coherent legal theory. Meanwhile, in domestic administrative law literature, legally non-exist-

ent administrative acts have been largely referenced in passing, primarily in administrative law textbooks, either as examples from comparative administrative law or as theoretical legal constructs.

Despite its systematic approach and originality, Zoran Tomić's legal theory on legally non-existent administrative acts (then part of Yugoslav legal thought) failed to gain traction in Serbian legislation. Opposing viewpoints still dominate in administrative law theory. Some argue that what is referred to as a legally non-existent administrative act is not an administrative act and cannot constitute a separate category, while others contend that, alongside the category of null-and-void administrative acts, there is no need for the existence of legally non-existent administrative acts.

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