

**FEATURES OF THE APPLICATION OF ADMINISTRATIVE LEGAL ACTS
IN THE PRACTICE OF THE REPUBLIC OF AZERBAIJAN,
THE KYRGYZ REPUBLIC AND THE REPUBLIC OF TAJIKISTAN**

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One of the most difficult theoretical and practical problems, both in legal science in general and in administrative law, is the problem of administrative acts. Traditionally, more attention is paid to the study of legislative acts in force. It should be stated that when adopting administrative acts, the legislative acts in force are taken as a guide. The article presents a general description of the Law of the Republic of Azerbaijan On Administrative Proceedings, the Administrative Procedure Code of the Republic of Azerbaijan, the Law of the Kyrgyz Republic On the Fundamentals of Administrative Activity and Administrative Procedures, the Administrative Procedure Code of the Kyrgyz Republic and the Code of Administrative Procedures of the Republic of Tajikistan. The content of the main concepts is disclosed.

Key words: *Administrative law, administrative act, definition, court, article.*

One of the sources of administrative law is administrative acts. An administrative act is a complex and multifaceted concept. In scientific literature, in addition to the term “administrative act”, other terms are also used to denote the same legal phenomenon - “legal act of management”, “act of the executive body”, “legal act of the executive body”, “legal acts of state administration”, etc. These terms have the same meaning. Thus, the differences between these concepts are not due to the fact that the first concept is given one meaning and the second another, but rather to the different approaches of the authors to the selection of the characteristics of this concept and, accordingly, the definition of the concept itself. Even semantic analysis shows that the above-mentioned terms are practically the same and interchangeable. This is especially important from the point of view of international and comparative legal practice, since the term “administrative act” is more universal in nature and is widely used in the administrative-legal doctrine of foreign countries.

Administrative acts, which are mainly written documents, are adopted by authorized persons, manifest themselves as a form of expression of self-government decisions, have an official character and have binding legal force.

The definition of the concept of administrative act was first reflected in Article 2.0.2 of the Law of the Republic of Azerbaijan “On Administrative Proceedings” dated October 21, 2005 (to date, this Law has been supplemented and amended 18 (eighteen) times), which was adopted in order to make administrative proceedings transparent, prevent bureaucracy

in the public administration system and achieve the rule of law. It consists of 91 (ninety-one) articles and 9 (nine) chapters: an administrative act is understood as a decision, order or other type of government measure adopted by an administrative body in order to regulate or resolve a specific (concrete) issue related to the field of general (public) law and which creates certain legal consequences for the legal or natural person(s) to whom it is addressed [1].

The Law of the Republic of Azerbaijan “On Administrative Proceedings” also defines the terms “interim administrative act”, “favorable administrative act” and “unfavorable (encumbrance) administrative act”. According to the aforementioned Law, “interim administrative act” means an act adopted by an administrative body regarding the organization and implementation of a specific proceeding.

“Favourable administrative act” means an act that grants a right to the interested person or confirms his/her right, or removes the duty(s) imposed on him/her.

“Unfavorable (burdensome) administrative act” means an act that deprives the interested person of a right or restricts his right, or imposes certain duties (responsibilities) on him/her.

Article 91 of the Law of the Republic of Azerbaijan “On Administrative Proceedings” states that “this Law shall enter into force on the same day as the Administrative Procedure Code of the Republic of Azerbaijan”.

On June 30, 2009, the first Administrative Procedure Code of the Republic of Azerbaijan was adopted, consisting of 132 (one hundred and thirty-two) articles, and was scheduled to come into force on January 1, 2011 (to date, this Code has been supplemented and amended 25 (twenty-five) times) [2].

Thus, from January 1, 2011, the Law of the Republic of Azerbaijan “On Administrative Proceedings” and the Administrative Procedure Code began to be applied.

The Plenum of the Constitutional Court of the Republic of Azerbaijan, in its Decision dated June 13, 2013, focused on the legal nature of the concept of “administrative act” and explained what characteristics the said act should have. The mentioned Decision states that “an administrative legal act is understood as an act that regulates administrative relations or resolves a specific administrative issue (dispute), determines the new legal status of legal entities, that adopted by an authorized body or officials in an administrative manner (within the framework of the administrative process), for the implementation of administrative functions and the achievement of its goals” [3].

The Plenum of the Constitutional Court of the Republic of Azerbaijan, in its Decision dated May 19, 2014, once again expressed its position on the administrative act as follows: “an administrative act is an expression of will adopted unilaterally by an authorized administrative body, serving public interests in the field of general (public) law and mandatory for execution. Although the State Real Estate Registry Service is considered an

administrative body, its registration of property ownership and issuance of the relevant Extract constitutes a “passive legitimization” activity. The said Extract cannot be considered an administrative act” [4].

It is commendable that the Plenum of the Constitutional Court of the Republic of Azerbaijan referred to some decisions of the European Court of Human Rights in its Decisions of both June 13, 2013 and May 19, 2014.

The Plenum of the Constitutional Court, in its Decision dated June 13, 2013, also indicated that the main subject of administrative law disputes is the administrative body (performing public functions). One of the parties to a dispute considered in administrative-procedural order is necessarily an administrative body. The list of administrative bodies is given in the Resolution No. 136 of the Cabinet of Ministers of the Republic of Azerbaijan dated August 28, 2007 “On Approval of the Classification of Administrative Bodies” (to date, this Resolution has been supplemented and amended 101 (one hundred and one) times) [5]. Guided by paragraph 5 of that “Classification”, it can be said that the list of administrative bodies listed in the said “Classification” is not restrictive.

If a department within a ministry or other state body does not have the authority to adopt administrative acts, that department will not be considered an administrative body.

The legal concept of an administrative act in the law is very important for the types of claims that can be raised in the administrative process. In the previous legislation of the Republic of Azerbaijan, acts adopted in administrative proceedings were called by various names (decision, order, decree, instruction, etc.) and the legal concept of those acts was not reflected in normative legal acts.

We would like to note that, despite the similarity of the concepts of “legal act” and “instruction”, the definition of an administrative act in the form of an instruction seems somewhat illogical, since here there is an attempt to define a whole (i.e. a legal act) through an instruction, which is only a part of it. Thus, an act consists of at most not one, but several instructions. It should also be noted that the instruction itself becomes an element of legal reality only after the will of the relevant subject is declared and established in the appropriate form - in most cases in the form of a written document.

A number of motives led the legislator to adopt the concept of administrative act in the Republic of Azerbaijan. First of all, it allows to group the actions of administrative bodies under a certain concept. In addition, it brings clarity for the administrative bodies to whom their actions are directed and what responsibilities the content of the action and, at the same time, the exercise of their powers impose on them.

The legislator has concentrated on the main criteria in defining the concept. The same criteria are also considered an integral part of the concept of an administrative act according to the administrative law of European countries. This concept is in a certain sense an inductive concept, that is, by giving this concept, the legislator tried to list the typical features that are

important for the realization of the functions of an administrative act. A broad understanding of the concept of an administrative act leads to an expansion of the possibilities of legal protection. Administrative acts can also be expressed in implied actions. For example, if the policeman determines the traffic rules on the street with a hand signal or if the red light turns on at a traffic light, then this is an administrative act [6, p. 47].

F. Mehdiyev notes that sometimes the legislation considers certain behaviors to be acts, for example, failure to respond to an application to the administration is considered rejection decision, and the person whose rights have been violated is given the right to apply to court [7, p. 281].

The adoption of an administrative act is a form of activity of administrative bodies and is the implementation of existing legislative acts. In other words, administrative bodies must adopt administrative acts in compliance with the legislative acts of the Republic of Azerbaijan.

An administrative act determines the legal status of the person(s) to whom it is addressed, in other words, what is obligatory and permissible for him/her. To understand the importance of an administrative act, it is necessary to clarify its functions.

The characteristics of an administrative act can sufficiently fully express its essence and legal nature, as well as the main directions of its impact on specific social relations. Let's consider the functions of an administrative act.

The functions of an administrative act consist of a regulatory impact on public management relations, which ensures the achievement of goals and the solution of management tasks through the issuance of an administrative act. When an administrative act is issued, the norms established therein directly affect the state administration itself. Depending on the nature of such an impact, the following functions of an administrative act can be distinguished:

- Function of ensuring public interests;
- Function of material and legal regulation (regulatory function);
- Administrative and procedural function;
- Function of implementing an administrative act;
- Function of protection.

The current administrative policy in the field of creating legislation of the Republic of Azerbaijan that determines the management process and the procedure for adopting administrative acts should be primarily aimed at ensuring public interests, which will ultimately help improve the legal regulation of relations between executive authorities and combat the adoption of administrative acts that violate the rights and freedoms of citizens.

We consider it necessary to note that an administrative act consists of the following 8 (eight) elements:

- author of the administrative act;
- person to whom the administrative act is addressed,
- subject of the administrative act,

- purpose of the administrative act,
- place and time of adoption of the administrative act,
- factual basis of the administrative act,
- content of the administrative act:
- form of the administrative act.

Let's refer to the legislative acts of the Kyrgyz Republic and the Republic of Tajikistan regarding administrative acts.

According to Part 6 of Article 4, entitled "Basic Concepts", of the Law of the Kyrgyz Republic "On the Fundamentals of Administrative Activity and Administrative Procedures" dated July 31, 2015, which consists of 17 (seventeen) chapters, and 96 (ninety-six) articles, an administrative act is an act of an administrative body or its official, at the same time:

- a) having a public-legal and individually- defined character;
- b) having an external impact, i.e. not having an intra-departmental character;
- c) entailing legal consequences, i.e. establishing, changing, terminating rights and obligations for the applicant and (or) the interested party [8].

In part 5 of the above-mentioned article, administrative procedures are defined as follows: "Administrative procedures are actions of an administrative body performed on the basis of an application from an interested party, an initiative of an administrative body to establish (provide, certify, confirm, register, ensure), change or terminate rights and (or) obligations, including those ending with the issuance of an administrative act (its adoption, approval, confirmation), or registration or recording of an interested party, its property, or the provision of funds, other property and (or) services at the expense of the state budget, from property in state or municipal ownership".

The preamble of the Law of the Kyrgyz Republic of July 31, 2015 states that, firstly, it is based on the requirements of the norms of the Constitution of the Kyrgyz Republic, which establish that state bodies and local governments, when exercising their powers, must act on the basis of the principles of openness and responsibility to the people and in the interests of the people, serve the whole society, and not some part of it; and, secondly, it defines uniform and basic principles, rules and procedures for the activities of state bodies and local governments in relations with individuals and legal entities.

The subject of regulation of the Law is that the Law of the Kyrgyz Republic in question: firstly, establishes the foundations of administrative activity of a public-legal nature; secondly, regulates legal relations between administrative bodies and individuals, legal entities in the implementation of administrative procedures; thirdly, determines the procedure:

- a) appeals against administrative acts, actions and inactions of administrative bodies;
- b) execution of an administrative act;
- c) recovery of administrative expenses;
- d) compensation for damage caused by the administrative procedure.

Chapter 1. Law “General Provisions” (Articles 1-4); Chapter 2. “Fundamental principles of administrative activity” (Article 5-12); Chapter 3. “Jurisdiction of administrative cases and interaction of administrative bodies” (Articles 13-16); Chapter 4. “Procedure for implementing the administrative proceeding” (Articles 17-26); Chapter 5. “Stage of initiation of administrative procedure” (Articles 27-32); Chapter 6. “Current stage of the administrative procedure” (Articles 33-48); Chapter

7. “Types and forms of administrative act” (Articles 49-51); Chapter 8. “Acceptance, delivery, publication and entry into force of an administrative act” (Articles 52-54); Chapter 9. “Invalid administrative act. Cancellation of administrative act” (Articles 55-60); Chapter 10. “Grounds and procedure for filing an administrative complaint” (Articles 61-66); Chapter 11. “Consideration and resolution of an administrative complaint” (Articles 67-69); Chapter 12. “Execution and enforcement of an administrative act and decision on an administrative complaint” (Articles 70-83); Chapter 13. “Execution of monetary claims” (Articles 84-87); Chapter 14. “Administrative expenses” (Articles 88-92); Chapter 15. “Responsibility for causing and compensating damage” (Articles 93-94); Chapter 16. “Transitional Provisions” (Article 95); Chapter 17. “Final Provisions” (Article 96).

Part 3 of Article 3 of the Administrative Procedure Code of the Kyrgyz Republic dated January 25, 2017, which includes 277 (two hundred seventy-seven) articles and 28 (twenty-eight) chapters, defines an administrative act in Part 3, and Part 9 defines administrative procedures as in the Law of the Kyrgyz Republic “On the Fundamentals of Administrative Activity and Administrative Procedures” [9].

Article 1 of the Code of the Republic of Tajikistan “On Administrative Procedures” dated March 5, 2007, which consists of 8 (eight) chapters and includes 141 (one hundred and forty-one) articles, states that: “this Code defines the procedure for the preparation, adoption and execution of administrative- legal acts, the consideration of administrative applications and complaints, the implementation of administrative proceedings in court, and the interaction of administrative bodies. The purpose of the Code is to ensure that administrative bodies comply with the rule of law, the rights and freedoms of man and citizen, the interests of society, the state and legal entities” [10].

The chapters of the Code dated March 5, 2007 are titled as follows:

- 1) Chapter 1 - General Provisions (Articles 1-12);
- 2) Chapter 2 - Administrative-legal act (Articles 13-26);
- 3) Chapter 3 - Procedures on administrative act (Articles 27-71);
- 4) Chapter 4 - Execution of administrative act (Articles 72-88);
- 5) Chapter 5 - Administrative procedures within the administrative body in connection with an administrative complaint against an administrative act (Articles 89-113);
- 6) Chapter 6 - Proceedings on administrative procedures in court (Articles 114-135);

7) Chapter 7 - Administrative procedures in connection with an administrative complaint against a normative administrative-legal act (Articles 136-140);

8) Chapter 8 - Final provisions (Article 141).

The Code of the Republic of Tajikistan of March 5, 2007, normatively establishes the definitions of the following concepts (Article 2): “administrative body”; “collegial administrative body”; “interested party”; “administrative-legal act”; “administrative act”; “normative administrative-legal act”; “publication”; “administrative statement”; “administrative complaint”; “administrative procedures”; “oral hearing”.

The definitions of the following concepts deserve attention: Administrative-legal act - an administrative act and a normative administrative-legal act adopted by an administrative body on the basis of a law or other normative legal act.

An administrative act is an individual administrative-legal act adopted by an administrative body on the basis of a law or other normative legal act, establishing, changing, permitting or confirming the rights and obligations of a person or a limited circle of persons. An administrative act shall also include a decision taken by an administrative body to refuse to satisfy an applicant’s request on matters within the competence of that body, as well as a document issued or certified by an administrative body that may entail legal consequences, including a certificate, license, permit, etc.

A normative administrative-legal act is a generally binding administrative-legal act issued by an authorized administrative body on the basis of a law or other normative legal act adopted on its basis, containing general rules of conduct of permanent or temporary and repeated application, including instructions, regulations, charter, etc.

Administrative procedures are the activities of an administrative body for the purpose of preparing, adopting and implementing an administrative-legal act, as well as considering administrative applications and complaints.

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