

## **TYPES OF NON-NORMATIVE LEGAL ACTS OF THE REPUBLIC OF AZERBAIJAN**

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*It is noted in the article that the Republic of Azerbaijan, having officially enshrined in its constitutional legislation the concept of “acts of a normative nature”, allowed the operation of mixed legal acts along with normative legal acts and individual legal acts. Thus, through the adoption of acts of a normative nature and non-normative legal acts, the implementation of general legal provisions in various areas of national law is ensured.*

*In the article, it is especially noted that the procedure for adopting non-normative legal acts is significantly different from the norm-making process. It is quite simple and not regulated in detail. Nevertheless, the peculiarities of the adoption of some non-normative legal acts are reflected in the current legislation.*

**Keywords:** law, act, normative, non-normative, constitution, legislation, norm, individual, mixed.

In legal science and legal practice, various legal terms are used to generalize legal acts that are similar in purpose, legal content, structure, procedure for adoption and mechanism of legal impact. Currently, the legal doctrine widely uses the expressions “individual legal act”, “law enforcement act”, “individual act of legal regulation”, “decision”. At the same time, the term “non-normative legal act” is officially enshrined in national constitutional legislation. It is also interesting that in the provisions of the Constitutional Law of the Republic of Azerbaijan “On normative legal acts” dated as December 21, 2010 on types of legal acts, the term “individual legal acts” is not used at all. In this case, legal acts of the corresponding legal nature are called non-normative legal acts, and Article 67.4 of the same Constitutional Law does not allow the replacement of generally binding rules of conduct with individual law enforcement acts based on free discretion [1]. In other words, the formal adoption by the legislator of the term “individual law enforcement act” logically creates the basis for the adoption of the term “normative law enforcement act” or, at least, its recognition. Naturally, for the first time in the post-Soviet legal space, the constitutional legislation of Azerbaijan has already introduced the concepts of normative acts and individual law enforcement acts, thereby securing the existence of mixed legal acts along with normative legal acts and individual legal acts.

When distinguishing between normative and non-normative acts, it would be wrong to rely only on the names of these acts. Because neither in legal literature nor in current legislation is there an exact classification that would allow one to determine the location of a particular legal document based only on the name of the legal act. Most authors emphasize that the

difference between primary and secondary legal norms gives rise to two types of normativity [2, 56].

It should be noted that in the legislative practice of the Republic of Azerbaijan, the “recognition” of normative acts, along with normative and non-normative legal acts, does not “fit” into the framework of the traditional two-element (normative and non-normative acts) classification of legal acts that exists in legal theory.

Regarding this, we believe that in order to understand the essence of normative acts officially reflected to the legislation of the Republic of Azerbaijan and to identify their differences from normative and non-normative legal acts, it is necessary to look to the concept of Herbert Hart, which involves considering the legal system as a unity of primary and secondary norms.

Given the complexity of the legal system, H. Hart suggests distinguishing between two different but closely related types of rules. According to his approach, the first type of rules, which are considered primary or fundamental, reflect the performance of certain actions or abstinence from performing these actions. Rules of the second type are secondary in relation to the rules of the first type, since they allow people to introduce new rules of the first type, cancel or change previous ones, or change the scope of their application in various ways, as well as organize control over their implementation by performing certain actions [3, 81].

Related with our acceptance of the abovementioned understanding of H. Hart on the relevant issue, we consider it necessary to highlight not only the distinctive features of normative legal acts, normative acts and non-normative (individual-legal) acts, but also the general characteristics and interrelations of these legal acts. Undoubtedly, there is much in common between these types of legal acts. Thus, all of them: are characterized by the certainty of legal regulations reflected in their content; they have a dominant character, expressed in the provision of coercive power by the state; they are considered the result of strictly defined activities of persons specially authorized for this purpose; they have not only a specific structure, but also attributes, the violation of which leads to their recognition as invalid; they regulate public relations.

In this case, when identifying and showing the distinctive features of normative legal acts, normative acts and non-normative (individual legal) acts, it is necessary to keep in mind the fundamental provisions developed by the theory of law. For example, according to these provisions, non-normative legal acts are characterized by the following features:

- 1) these acts are focused on specific relations requiring their own legal regulation;
- 2) with the help of these acts, the emergence, change or termination of legal rights and obligations of legal entities on an individual scale is carried out;
- 3) this type of legal acts indicates personally individualized persons as subjects to whom their force is directed;

4) these acts supplement normative legal acts;

5) act as independent components of the mechanism of legal regulation.

We believe that if the theoretical approach of H.Hart to legal norms is adopted, the concept of “normative law enforcement acts” should be officially reflected and widely used at the level of national constitutional legislation. Since, regardless of how the relevant legal acts are called (currently, in national legislation they are called “normative acts”), due to their characteristics, place and role in the mechanism of legal regulation, “intermediate” legal status, they perform the function of exclusively normative law enforcement acts.

The essence of a non-normative legal act follows from its very name - “non-normative”, and such an act does not have the characteristics of a normative legal act. Normative legal acts differ from non-normative legal acts by their purpose and legal impact on the mechanism for regulating social relations.

Despite their comprehensive application, the current legislation does not establish general rules regarding the types of such acts, their preparation, adoption, entry into force, suspension on force and cancellation. However, all these issues are considered very important. Since individual legal acts are adopted en masse by state authorities, local government bodies and their officials and are the main means of promptly resolving current issues in all areas and spheres of public administration.

In particular, they are used to implement regulatory, administrative, supervisory, protective and other functions of public administration. Since the legal force of individual legal acts entails legally significant consequences for individuals and legal entities, an accurate and complete definition at the legislative level of the types of such acts, the procedure for their preparation and adoption affects the degree of guarantee and protection of the rights and freedoms of the relevant persons. A non-normative or individual legal act is a unilateral, voluntary, dominant action performed by a body or its official in accordance with the law in order to implement legal norms related to a specific case. It is understood as a legal act reflecting an individual specific instruction, intended for one-time use and not defining legal norms. A non-normative legal act acts as a link between a legal norm and its implementation. However, it should be noted that “legal documents as a form of legal information do not know the notion of norm” [4, 585].

Unlike normative legal acts, non-normative legal acts always have a clearly expressed law enforcement (law enforcement) nature. They act as legal acts that create, change or terminate certain legal relations.

The basis for the adoption of non-normative legal acts are current legislative norms that provide for the possibility or necessity of adopting such acts when certain vital situations arise in relation to citizens and organizations that require independent resolution, the scope of which is clearly defined.

The main feature of this type of legal acts is their individual nature. The individuality of a non-normative legal act can be defined as its addressee to a specific person or body and the one-time nature of its application. The onetime application (implementation, execution) of instructions, as one of the general features of these acts, can be understood only in the sense that these instructions are one-time in nature. Each individual legal act solves a specific administrative task or issue once.

The force of an act may change depending on time. Many individual legal acts imply the performance of one-time actions to implement the instructions reflected in their content. For example, an order addressed to a subordinate civil servant and reflecting a short-term assignment from his superior, or a resolution issued in a case of an administrative offence. Legal relations arising on the basis of such acts, as a rule, terminate after the relevant subjects have fulfilled their duties (fulfilment of an official assignment, payment of a disciplinary fine). An order on the appointment of a particular person to a position cannot be cancelled by another order, the abolition of this body does not entail a reduction in the number or staff of employees, etc. It remains in force until it actually loses its legal force in connection with. Nonnormative legal acts providing for the right of individual subjects to use certain material and other resources may continue to be in force for a longer period. For example, a decision on the appointment of an old-age pension is implemented throughout the year, and therefore, in relation to a specific person, this decision may be in effect for years and even decades. Such acts act as mandatory acts throughout the life of the subject, and some acts may even outlive their subject and extend their force to his legal heirs.

The implementation of norms in various branches of national law is ensured by the adoption of non-normative legal acts. With regard to individual entities, one can observe the implementation of relevant norms in specific cases of constitutional, administrative, financial, tax, labor, civil, family, environmental, land and other nature. For example, a decision of a tax authority to bring to tax liability a person evading taxes ensures the implementation of the relevant norms of financial or tax law; An order of the head of a local executive body on the provision of a land plot for lease to a citizen, the relevant norms of land legislation; A decision of an authorized executive body on the transfer of property to the operational management of a specific state enterprise ensures the application of the relevant norms of civil law.

Like normative legal acts, non-normative legal acts also have legal force, which is considered the most important element of their legal nature. According to the approved general approach, the legal force of a legal act is a property expressed in the ability of the body or person adopting it to become a regulator of legal relations as a result of the procedures for the adoption and entry into force of this act, as well as the powers of this act. The degree of legal force of each act depends on the subject adopting it, its place and powers in the system of separation of powers and administrative hierarchy,

the nature and importance of the issue being decided, as well as the procedure for adopting this act.

Multifaceted law enforcement and law enforcement activities of state and municipal bodies, their officials have found their expression in non-normative legal acts. The adoption of such acts is not only one of the ways for state bodies (officials) to exercise their powers (duties) and realize their rights, but also one of the main methods for resolving specific issues arising in the implementation of duties and functions of public administration. According to the current constitutional legislation, the system of non-normative legal acts of the Republic of Azerbaijan consists of resolutions of the parliament, decrees of the head of state, government resolutions, acts of bodies implementing state registration of civil status acts, and other legal acts intended for one-time use. It should be especially noted that the Constitutional Law of the Republic of Azerbaijan "On Normative Legal Acts" establishes important rules regarding the preparation and adoption of normative legal acts, as well as their execution, publication, interpretation and systematization.

On the contrary, its provisions on the adoption of normative acts are limited. Thus, the provisions of this Constitutional Law apply only to the rules related to the execution, publication, interpretation and systematization of normative acts. In other words, the legislator, unlike normative legal acts, refuses to clearly define in this Law the rules for the direct preparation and adoption of normative acts, thereby creating opportunities for the use of various rules in the relevant area.

It should also be noted that the procedure for adopting non-normative legal acts differs significantly from the rule-making process. It is quite simple and is not strictly regulated. However, the specifics of adopting some nonnormative legal acts are reflected in the current legislation. For example, the procedure for adopting a resolution on an administrative offense is determined by the Code of Administrative Offenses. Undoubtedly, the requirement for the legality of these actions always comes to the fore. This means that legal acts must strictly comply with the provisions of the Constitution of the Republic of Azerbaijan and current legislation, meet the established requirements and be within the powers of the body or official adopting them.

In addition to the requirement of legality, legal acts must also meet the requirement of expediency, that is, the requirement of the usefulness of the adoption of a particular decision from the point of view of state or public interests. The third and most important limitation is the need to strictly adhere to the established procedure for the adoption of legal acts. Two types of proceedings on the adoption of nonnormative legal acts can be distinguished:

- 1) proceedings on cases of adoption of nonnormative legal acts related to the implementation of the rights and obligations of citizens and organizations;

2) proceedings on issues of preparation and adoption of non-normative legal acts initiated by state bodies, local government bodies or their officials.

Within the first type of proceedings, three stages can be distinguished (submission of the relevant application by the applicant and its acceptance for consideration by the authorized body, consideration of the application and making a decision on it, execution of the decision).

With regard to the second type of execution, such stages as preparation of a draft decision, consideration and adoption of the draft, implementation of the decision can be distinguished.

In addition to the established procedure for adoption, all non-normative legal acts must also comply with a number of other requirements. The structural elements of any legal act must ensure the unity, logical consistency and mutual consistency of legal provisions. The structure of the act and the need to include certain structural elements in it are determined based on the type and scope of this act, as well as the nature of the content of the legal act. Non-normative legal acts have a different structure, which is determined by the legal status and functional purpose of the bodies adopting them, the complexity of the issues under consideration, the legal force of the act and the procedure for its adoption.

Their structure can be simple (an order on appointment to a position, an act on permission to perform a certain action) or complex (a resolution on an administrative offence case). Thus, the structure of an order, as a rule, consists of two parts (approving and prescriptive), which interact with each other. The accompanying part indicates the reasons for issuing the order, set out in the main part. Usually, this part is expressed by such words as "... for the purpose of", "... in essence", "... in connection with" or "... in connection with". If the basis for issuing an order is a normative legal act, its operative part indicates the initial data of the relevant normative legal act, namely, the form, name, subject of rule-making, date of adoption and number of the act.

The imperative part of the order is separated from the affirmative part by the verb "I order". Usually, this expression is written in capital letters, without a new line, without indents and quotation marks, and a colon is placed at the end of the verb. The operative part is divided into paragraphs and subparagraphs, which are numbered in Arabic numerals. Each paragraph specifies the person executing the order, the action expressing the order, and the term of the order. The last paragraph of the order specifies the person who is entrusted with overseeing the execution of the document.

The text of a non-normative legal act with a simple structure usually consists of two parts. In this case, if the first part describes the grounds (facts, events) for the adoption of this document, then the second part sets out decisions and orders [5]. However, in some cases, the text of the act may consist of only one part, implying an imperative legal order. Changes in structurally simple individual legal acts are considered to be acts-orders, which are instructions of an official placed on the relevant documents, for example, "approve", "implement", "pay", etc. They reflect such ideas. As a rule, the complex structure of a non-normative legal act is determined by

legislation. Thus, a court decision consists of introductory, descriptive, reasoning and final parts. In this case, the introductory part of the act (decision, order, etc.) indicates its name, place and date of adoption of the act, name of the body or official who adopted it, as well as instructions on the issue being decided. The descriptive part reflects the description of acts related to the issue under consideration. The substantiating part includes an analysis of evidence confirming the stated facts, their legal characteristics, an explanation of the meaning of the applicable law, as well as an interpretation of the procedural rules on which the practicing lawyer relies. Finally, the concluding part of the act reflects the decision on the relevant issue, which is binding on the parties, i.e. the participants.

The text of a non-normative legal act in terms of terminology and style of presentation should not differ from the text of a normative legal act and a legal act of a normative nature. The letter should be written in accordance with the rules of the official business style, based on the use of simple and clear, precise and generally understandable lexical formulas. At the same time, such requirements as brevity of the text, logical completeness, integrity and interdependence of the methods of expression, as well as stability, ensuring the simplicity of the meaning of legal regulations and excluding their ambiguous interpretation, should be observed. Non-normative legal acts in terms of their personalization do not need the quality that is especially important for acts with normative content, namely, the property of wide distribution. In this regard, not all individual legal acts are included in the State Register of Legal Acts of the Republic of Azerbaijan, but only a part of them that has special significance. Currently, of the legal acts reflecting such instructions, only resolutions of the parliament, orders of the head of state and the government are included in the State Register of Legal Acts. It should be noted that parts of a legal document that constitute a state secret are not published in the electronic version of the State Register and in the collection of the State Register [6].

Determining the exact terms of validity of any legal act allows ensuring the rights, freedoms and legitimate interests of citizens and organizations, strengthens the authority of the executive power among the population, creates a solid legal basis for the operation of the entire system of acts. A non-normative legal act, as a rule, comes into force from the moment of its adoption, that is, from the moment it is signed by an official authorized to do so. However, these acts come into legal force depending on certain moments: from the date specified in the act itself; from the moment of expiration of a specific period specified in the act itself; from the moment of occurrence of a certain legal fact; from the moment of submission of the act itself or its copy by the interested party to whom the act relates; from the date of approval of the act by a higher official; from the moment of state registration of the act in a special register; from the moment of expiration of the period established for filing a complaint against the act; from the date of official publication of the act; from the moment of expiration of a certain period after the official publication of the act.

The effect of a non-normative legal act may be suspended in the following cases: upon detection of signs of non-compliance of a nonnormative legal act with the provisions of laws or mandatory normative legal acts regulating the relevant relations, in whole or in part; the existence of an order of an authorized state body to cancel or amend the act due to its noncompliance with the provisions of laws or other mandatory normative legal acts; the existence of an objection from a prosecutor regarding the need to cancel or amend the act due to its non-compliance with the provisions of laws or mandatory normative legal acts; by filing a complaint or application against the act by the person or organization against whom the act was issued; Suspension of a legal document issued to an individual or organization on the basis of the act, for a certain period.

The effect of non-normative legal acts may be terminated in the following cases: execution of this order, if the content of the act is related to the commission of a specific act; occurrence of a specific legal event; expiration of the act; adoption of a new act that fully reflects the content of the previous act or cancels its effect; cancellation of the act by the body that adopted it or by a competent higher body. Unlike complaints about normative legal acts, complaints about non-normative legal acts can be filed both in court and out of court, that is, in an administrative manner. Citizens, organizations and other persons have the right to appeal decisions, actions (inaction) of a state or other public body, organization or person directly to the court or to raise objections against their decisions, actions (inaction) to a higher body, organization or official, as well as to use methods of out-ofcourt dispute resolution. Types of non-normative legal acts can be identified according to the relevant criteria. Thus, depending on their immediate purpose and nature, non-normative legal acts are divided into normative (an order to promote a position or a permit to build an industrial facility) and protective (a decision to bring to administrative responsibility).

Depending on the method of influence, non-normative legal acts are mandatory, prohibitive and empowering. Mandatory acts imply an instruction to the subjects to whom they are addressed to perform certain actions. This is most of the acts related to the daily executive and administrative activities of state authorities and local self-government bodies. An example of them is the requirement of the tax authority for the payment of taxes and fines. Prohibitive acts are close in essence to mandatory acts, since the prohibition includes the obligation not to perform certain actions. However, it is precisely this passive nature of the prescribed behavior that can provide grounds for distinguishing prohibitive acts from mandatory acts. Examples of such acts include decisions of various control and supervisory bodies prohibiting the construction of facilities, the operation of vehicles, the sale of various types of products, entry into certain places, etc. Authorizing acts have a content related mainly to the granting of certain rights to citizens and organizations to whom they are addressed. An example of this is orders on the distribution of material and financial resources, decrees and orders on awards, rewards, etc.



According to the nature of their instructions, non-normative legal acts can be divided into imperative and recommendatory acts. Imperative acts are characterized by such features as absolute certainty of requirements, uncertainty, and the advance determination of the results of the act and its legal consequences. As for recommendatory individual acts, they are most often adopted based on the results of inspection and control activities.

Non-normative legal acts, depending on their term of validity, are divided into one-time and continuous. For example, if the decision to create a commission to prepare for the celebration of Independence Day as a holiday is considered a one-time act, then the order on appointment to a position is considered an individual legal act that has permanent effect.

Non-normative legal acts, according to the method of external expression, are verbal (written and oral) and implied (for example, gestures, signals, signs).

Depending on the procedure for adoption, normative legal acts are divided into acts adopted by officials or other persons individually, and acts adopted collegially.

Finally, non-normative legal acts can be divided into two parts (internal and external) depending on the circle of persons to whom they are addressed. Internal acts are always closely related to the internal organizational activities of the apparatus of a body or organization. Considering that the content of any non-normative legal act is a unilateral sovereign decision of a body or official on a specific issue arising in the relevant area, it is necessary to distinguish such an act from other official (service) documents that are close to it in external content, but do not reflect the said decision. These include: certificates confirming certain legal facts or reflecting certain service information; certificates confirming certain legal facts; protocols on the approval of individual legal acts. For example, protocols of state examinations, meetings, conferences and sessions of various state bodies, protocols on the performance of administrative and procedural actions, protocols on administrative offenses; reports on inspections and surveys; expert opinions; Information, requests and other written requests sent by administrative bodies to other state bodies, local government bodies, courts, other commercial and non-commercial organizations, as well as citizens.

It is also necessary to mention acts of interpretation as a type of non-normative legal acts. Thus, acts of interpretation are acts of interpretation of legal norms, revealing the content and purposes of a normative act, explaining the cases in which it should be applied, and the results of its application [7, 167].

Thus, according to the author's approach, the distinction between normative legal acts and non-normative legal acts, as well as the disclosure of the essence of non-normative legal acts should be based on the scientific concept of G. Hart, who considers the legal system as a whole as a unity of first- and second-order norms. This concept is valuable from the point of view of identifying the main features that distinguish normative legal acts,

normative acts and non-normative (individual-legal) acts from each other, as well as identifying common features and interrelations of these legal acts. At present, the official reflection and widespread use of the concept of “normative law enforcement acts” at the level of national constitutional legislation is inevitable. Since regardless of how such legal acts are called (currently in the legislation of the Republic of Azerbaijan they are called “normative acts”), due to their characteristics, place and role in the mechanism of legal regulation, intermediate legal status, they perform the function of a purely normative law enforcement act.

### **References**

1. Constitutional Law of the Republic of Azerbaijan dated December 21, 2010 “On Normative Legal Acts” // Collection of Legislation of the Republic of Azerbaijan, 2011, No. 2, Article 69.
2. Bernal C. Legal Argumentation and the Normativity of Legal Norms // Cogency, Vol. 3, No. 2, Summer 2011, pp. 53-66.
3. Hart H.L.A. The Concept of Law. 2nd edition. Oxford University Press, 1961, 309p.
4. Cyrus V. Legal Norms and Legal Institutions as a Challenge for Legal Informatics. In book: Positivität, Normativität und Institutionalität des Rechts. Festschrift für Werner Krawietz zum 80. Geburtstag. Berlin: Duncker & Humblot, 2013, pp.581-592.
5. “Instruction on the conduct of office work in state bodies, legal entities owned by the state and the controlling stake (shares) of which belongs to the state, and budgetary organizations”, approved by the Decree of the President of the Republic of Azerbaijan dated September 27, 2003 No. 935 // Collection of Legislation of the Republic of Azerbaijan, 2003, No. 9, Article 486.
6. “Regulations on the rules for including legal acts in the State Register of Legal Acts of the Republic of Azerbaijan”, approved by the Decree of the President of the Republic of Azerbaijan dated July 1, 2011 No. 463 // Collection of Legislation of the Republic of Azerbaijan, 2011, No. 7, Article 626.
7. Malikova M.F. Legal Theory. Textbook. Baku: Science and Education, 2019, 448 p.