

## ADMINISTRATIVE ACTS AND ISSUES RELATED TO THEIR LEGAL FORCE

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### Abstract

*Administrative proceedings are understood as activities carried out by the relevant administrative bodies within the framework of the procedural rules established by this Law on the adoption, execution, amendment or cancellation of an administrative act, as well as consideration of administrative complaints, upon the application of individuals or legal entities or on the initiative of administrative bodies. As can be seen from the definition, the main activity of an administrative body is related to the adoption of an administrative act. When interested persons against whom an administrative act has been adopted apply to the court to protect their rights and interests, first of all, whether an administrative act has been adopted in this regard is investigated. From this it is clear that the activities of administrative bodies and their regulation are related to administrative acts. In this regard, the legal force of administrative acts, as well as the validity of administrative acts, are checked in the courts based on the principles of legality and protection of the right to trust. In addition to conducting research on the legal force of administrative acts in theory and legislation, the practice of administrative bodies and court cases were also studied.*

**Keywords:** *administrative law, management, administrative bodies, administrative proceedings, administrative act, unfavorable administrative act, interested party, classification.*

### *I. Introduction*

The adoption of an administrative act is taken as the final result of administrative proceedings in administrative bodies. In this sense, an administrative act is understood as a decision, order or other type of power measure adopted by an administrative body in order to regulate or resolve a specific (concrete) issue related to the general (public) field of law and creating certain legal consequences for the legal or natural person (s) to whom it is addressed. The fact that the concept of “administrative act” began to be regulated in a single concept in legislation later led to the use of a unanimous form and methods in practice for administrative bodies. Currently, as we have seen from judicial practice, it is being investigated whether an administrative act should be adopted in relation to interested persons whose rights and interests are affected as a result of the actions of administrative bodies. In this sense, there is a need to investigate the concept of administrative acts and their legal force. The article examines the concept and essence of administrative acts, and examines the gaps and proposals in the existing legislation. The article consists of an introduction, 2 paragraphs and a conclusion.

### *II. Concept and essence of administrative acts*

Administrative proceedings are primarily governed by the language of the agency’s authorizing act, the relevant administrative procedural act (APA)<sup>29</sup>, and the procedural rules adopted by the agency. Many agencies use specific procedures for individual issues, so it is dangerous to overgeneralize the decision-making process of a particular agency. In some cases, courts have required agencies to follow specific procedures. There are essentially three components to agency decision-making:

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decision-making, adjudication, and administrative action. Administrative proceedings usually vary depending on the type of decision-making the agency is engaged in [5, p. 18].

The concept of an administrative act is of significant substantive and procedural importance. In the past, since there was no single concept of an administrative act, various concepts and forms were used in the conduct of administrative proceedings (for example, order, decree, decision, etc.). As a result of the formulation of legislation on administrative proceedings, the concept of “administrative act” began to be applied by defining a general rule. An administrative act is understood as an important form of activity of administrative bodies and as the implementation of the law. For this reason, an administrative act is considered one of the central concepts of administrative law. An administrative act, being a singular act of “applying law”, determines the legal status of the persons to whom it is addressed, that is, what is obligatory for them, etc. [3, p. 46].

The term “administrative legal act” is also referred to as “legal act of administrative bodies” in the administrative law of post-Soviet countries. However, in post-Soviet administrative law, legal acts of administrative bodies do not include acts of administrative bodies in the field of special law (such as contracts). Although not all legal acts of administrative bodies are considered administrative acts in the theoretical sense, acts that do not fall into this category are included in the subject of administrative contracts in the administrative law of the CIS countries. These are listed below. Legal acts of administrative bodies are divided into normative, individual and general acts. [2, p. 191].

It is also possible to consider the concept of administrative act in the legislation of other countries. According to Article 35 of the German Administrative Procedure Act, administrative acts and individual acts are adopted only in the field of general law and they represent unilateral and enforceable instructions and decisions that regulate individual relations directed towards the outside world. The United States Administrative Procedure Act of 1946, Section 2, uses the term “order” to describe a final decision of an administrative agency, including licensing, not otherwise provided for by law. According to Article 2, Subsection 2 of the Federal Administrative Procedure Act of 2001 of the Federal Democratic Republic of Ethiopia, an administrative order is “any decision or order of an agency, the purpose or effect of which is to impose a sanction or to grant or withhold a relief, including a decision to take or refrain from taking any other action or work of an administrative nature...” [10, p. 130].

Administrative act is a central concept in Spanish administrative law. The existence of an administrative decision is essential for the creation of rights and obligations within the framework of administrative law. In addition, judicial review requires the challenge of a previous decision (explicit, implicit or simply inaction). Therefore, administrative jurisdiction has traditionally been considered as a supervisory jurisdiction [6, p. 84].

Just as the legislative function is performed by legislative acts and the judicial function by court decisions, administrative proceedings are carried out on the basis of administrative acts. In order to clarify the importance of an administrative act, it is necessary to look at its functions. The executive, concretizing, enforcement, procedural and legal protection functions of an administrative act can be distinguished. It should be borne in mind that we may not observe each of these functions in a single administrative act. For example, a determinative administrative act does not have an executive function, since this type of administrative act does not require the performance of certain actions. When we say executive function, the administrative

proceedings are concluded with the adoption of that administrative act. The function of concretization means the determination of specific rights and obligations for the interested person by adopting an administrative act. Another function of an administrative act is its executive nature. Thus, one of the main functions of an administrative act is the executive function. With the adoption of an administrative act, it is immediately directed to execution. And the failure to execute an administrative act ultimately leads to a violation of the rights of interested persons. The function of administrative procedural and legal protection includes the possibility of filing an administrative lawsuit against an administrative act.

The Federal Democratic Republic of Ethiopia also drafted a Federal Administrative Procedure Act in 2001. The term decision-making is not mentioned at all in the Federal Administrative Procedure Act. The term “administrative decision” defined in Article 2, Subparagraph 2 of this draft is as follows: an administrative decision is “any decision, order or rule of an authority having a purpose or effect, including a decision to issue or refuse to issue a decision on its execution or refusal to execute [4, p. 130].

The importance of an administrative act can be considered in the formal and substantive sense. Thus, in the formal sense, an administrative act is understood as its external form, that is, its structure and form. Articles 57-59 of the Law “On Administrative Proceedings” regulate the formal requirements for an administrative act. However, the fact that an administrative act is marked with a decision or order does not mean that it is an administrative act. Thus, even if an administrative act meets formal requirements, it cannot be considered an administrative act if it does not provide for any regulatory rules.

In theory, to understand the essence of an administrative act, it is possible to note the following features:

1. The fact that an administrative act has binding legal force for interested persons. An administrative act is adopted by an administrative body as a result of administrative legal relations between an administrative body and interested persons. In administrative law, the relations that arise between an administrative body and interested persons are imperative in nature. This means that there are not equal, but subordinate relations between the administrative body and the interested person. Due to the superiority of administrative bodies over citizens, administrative acts adopted by them must be executed in a mandatory manner. In this regard, Chapter VIII of the Law “On Administrative Proceedings” entitled “Execution of Administrative Acts” regulates the means of mandatory execution of administrative acts.

2. The basis of an administrative act on the law. Of course, the binding nature of an administrative act does not mean that it is a condition for the possibility of abuse of authority by administrative bodies. Thus, when an administrative act is adopted by an administrative body, the adoption of that administrative act must be based on the law. This feature stems from the essence of the principle of legality, which is one of the basic and important principles of administrative proceedings. When an administrative act is adopted by an administrative body, the provision on which law it is based must be reflected in that act. This, in turn, is contained in the mention of the legal basis of the administrative act. Thus, if an administrative act adopted by an administrative body does not have a legal basis, that administrative act is considered invalid.

3. Adoption of an administrative act by a person with authority. An administrative act must be adopted by a person with authority to adopt it. Otherwise, that administrative act is considered invalid. According to Article 2.0.1 of the Law “On Administrative Proceedings”, an administrative body means the relevant executive authorities of the Republic of Azerbaijan, their local (structural) and other bodies, municipalities, as well as any natural or legal person authorized to adopt an administrative act in accordance with the law. As can be seen from this, an administrative act must be adopted by an administrative body in the manner prescribed by law. As a legislative body, the Milli Majlis of the Republic of Azerbaijan and courts, like judicial authorities, also have the authority to adopt an administrative act. For example, the decision of the chairman of the court on intra-judicial norms, the decisions of the chairman of the parliament on the organization of parliamentary sessions are considered administrative acts.

4. Determination of an administrative act as a measure of power. The unilateral adoption of an administrative act by an administrative body characterizes its “power” feature. A power measure is a unilateral expression of will. From this it becomes clear that an administrative act can be adopted in written, oral, gesture, or signal form. For example, a decision “on refusal to grant a labor pension” adopted by the State Social Protection Fund as an administrative body is an administrative act adopted in written form, a traffic policeman’s request to stop a car is an administrative act adopted in oral form, and a car stopping as a result of a red traffic light is an administrative act adopted in the form of a gesture. The nature of an administrative act as a measure of authority is understood as a measure taken by an administrative body in the field of public (general) law. It should be borne in mind that not all measures taken by an administrative body belong to the field of general law. For example, decisions adopted by the Personnel Department of the Ministry of Internal Affairs as an administrative body cannot be accepted as an administrative act.

5. The administrative act creates legal consequences by determining the regulatory procedure. From the above-mentioned feature, it is clear that an administrative act, like a regulatory procedure, must create certain rights and obligations for interested persons. From this it is also clear that if the administrative subregulation adopted by the administrative body does not have a purpose, then the decision is excluded from being an administrative act. For example, the decision of the administrative body on inviting an interested person to administrative proceedings. Decisions of this type are also called intermediate administrative acts.

### *III. Types and legal force of administrative acts*

In order to clarify the essence of an administrative act, it is necessary to consider its types. In administrative legislation, administrative acts are divided into administrative and intermediate administrative acts according to their scope of application, into legal and illegal administrative acts according to their legal force, and into favorable and unfavorable administrative acts according to their consequences. According to Article 2.0.2 of the Law “On Administrative Proceedings”, an administrative act is understood as a decision, order or other type of power 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 creating certain legal consequences for the legal or natural person (persons) to whom it is addressed. The concept of an

administrative act is specifically regulated in the legislation and it is clear from the essence of the article that an administrative act creates certain rights and obligations for the persons to whom it is addressed. The concept of an intermediate administrative act is also established in the legislation. Thus, according to Article 2.0.9 of the Law "On Administrative Proceedings", an intermediate administrative act is intended as an act adopted by an administrative body in connection with the organization and implementation of a specific proceeding. An administrative body may adopt certain interim administrative acts in the course of administrative proceedings. Interim administrative acts are administrative acts adopted in connection with the organization and implementation of proceedings, having an auxiliary nature. For example, the decision of the State Medical Social Expertise and Rehabilitation Agency under the Ministry of Labor and Social Protection of the Population on inviting an interested person for a physical examination, the decision of the State Service for Property Issues under the Ministry of Economy of the Republic of Azerbaijan on appointing an expert, etc. such acts are considered interim administrative acts. Another classification of administrative acts is related to favorable and unfavorable administrative acts. According to Article 2.0.10 of the Law "On Administrative Proceedings", a favorable administrative act is considered an act that grants a right to an interested person or confirms his right, or takes away the duty (duties) assigned to him. Favorable administrative acts are administrative acts that alleviate the situation of individuals or legal entities or do not change it at all. The essence of a favorable administrative act is related to the legal significance of its favorability. According to Article 2.0.11 of the Law "On Administrative Proceedings", an unfavorable (burdensome) administrative act is considered an act that deprives the interested person of a right or restricts his right, or imposes certain duties (responsibilities) on him. Favorable and unfavorable administrative acts, in turn, can be legal and illegal acts. The legal force of an administrative act implies the beginning and continuation of the validity of the administrative act, which regulates how and for what period the administrative act has the ability to affect the interested persons to whom it is addressed. An administrative act enters into legal force from the moment the person to whom it is addressed or the person whose interests it affects is informed about it, or from the moment it becomes known to those persons. An administrative act enters into legal force in the content of which it was informed and is considered legally valid. An administrative act shall retain its legal force and be considered legally valid until it is recalled, annulled, amended, expires or is deemed invalid for any other reason in accordance with the procedure established by law. The administrative body shall be obliged to inform interested persons about the recall, annulment, amendment or invalidation of an administrative act. An invalid administrative act has no legal force. Its legal force begins from the moment the interested person is informed about the adopted administrative act. Since the period before the interested person is informed about the administrative act is of no legal significance, the administrative body may cancel or amend the administrative act during that period. The legal significance of an administrative act here is expressed in the fact that it creates the opportunity to use legal remedies from the moment the interested person receives the adopted administrative act, and its beginning is calculated from the moment it reaches the interested person. It would not be correct to consider the beginning of the legal force of an administrative act only from the moment the interested person is informed about the administrative act. Because in practice,

preliminary actions related to the execution of an administrative act can be taken by the administrative body until the person to whom it is addressed is informed about the administrative act. For example, a pension payment can be made in a new amount until the decision “on pension recalculation” is sent to the citizen. An administrative act has legal meaning from the moment the pension amount is transferred to the citizen’s card account.

According to their legal force, administrative acts are divided into legal and illegal administrative acts. An administrative act may be considered illegal if it was adopted on the basis of an incorrect legal norm or incorrect facts of the case. Illegal administrative acts are divided into an illegal favorable administrative act and an illegal unfavorable administrative act. The most concise explanation of an unfavorable administrative act is the change of the “status quo” to “status quo minus”. An unfavorable administrative act establishes instructions or prohibitions, or rights are canceled or withdrawn or changed to the detriment of the interested person, responsibilities are specified, or other significant burdens are determined or approved. A favorable administrative act, on the contrary, changes the “status quo” to “status quo plus”. A favorable administrative act establishes and approves rights and privileges in favor of the interested person [3, p. 380]. It is impossible to cancel an illegal favorable administrative act by its nature. However, the legislation provides for the cancellation of an illegal favorable administrative act under certain conditions. The possibility of this legal position is regulated by the principles of legality and protection of the right to trust. One of the indicators of the fact that administrative bodies are bearers of public interests and subjects of public law is their discretionary powers. According to the current legislation, discretionary powers are the right granted by law to an administrative body or official to choose one of the possible lawful decisions [1, p. 433].

According to Article 67.5 of the Law “On Administrative Proceedings”, in cases where the interested party trusts the content and this trust is protected by law, as well as does not harm the rights or legally protected interests of other persons, state interests or public interests, the cancellation of an illegally favorable administrative act that provides for one-time or current monetary or material obligations in relation to the interested party or that has led to the emergence of such obligations is not allowed. In cases where the interested party spends the funds or uses the property granted to him and is therefore unable to return them or will suffer significant damage if he returns them, that person has the right to protection of trust by law. According to Article 67.6 of the Law, an interested person cannot invoke the right to protection of trust in the following cases:

1. 67.6.1. if he achieved the adoption of an administrative act by means of bribery, intimidation or deception;
2. 67.6.2. if he achieved the adoption of an administrative act by submitting documents reflecting incorrect or distorted information;
3. 67.6.3. if he knew that the administrative act was illegal or did not know it as a result of gross negligence.

In the practice of administrative bodies, we witness the cancellation of illegally favorable or illegally unfavorable administrative acts, regardless of the type of those acts. In court practice, there are usually no cases of re-adoption and restoration of illegally favorable administrative acts that were subsequently canceled. However, administrative acts adopted by administrative bodies in connection with the restoration of the previous legal situation as a result of an illegally favorable administrative act are

canceled. This is associated with the right of the interested party to protect their trust. The trust of individuals or legal entities in the administrative practice of administrative bodies is protected by law. The decision of the Baku Administrative Court against the State Social Protection Fund under the Ministry of Labor and Social Protection of the Population dated 21.08.2024 No. 2-1(112)-6727/2024 states: "Thus, there is a favorable administrative act in force regarding the plaintiff, the plaintiff's martyr's family member card has not been canceled, and this circumstance also did not exclude the plaintiff's recognition as a martyr's family member on the basis of that card during the past period, and the right of legitimate trust to benefit from the benefits and privileges provided by the defendant on his own initiative arising from this status. Therefore, the claim must be satisfied, and the defendant must be entrusted with the task of determining the pension of the President of the Republic of Azerbaijan for the martyr's family from 27.02.2023, the date of his application to the plaintiff."

In the decision of the Administrative Collegium of the Supreme Court of the Republic of Azerbaijan dated 04.12.2024 No. 2-1(102)-3037/2024 on behalf of the Republic of Azerbaijan on the case against the defendant State Social Protection Fund Central Branch for Appointment with Special Conditions, it is noted: "It should be taken into account that administrative bodies are obliged to comply with the requirements of the law and may interfere with the rights and freedoms of a person only in cases and in the manner prescribed by law. These requirements established by the legislator also arise from the principles of the rule of law and legality in a legal state. The purpose of this approach of the legislator is to ensure that, after an investigation by an administrative body obliged to make a legal decision in a legal state, only a comprehensive and objective investigation is conducted on the administrative proceedings that meet the requirements of the law to the extent that it allows for a correct decision to be made, and that the principle of legality is upheld on this basis, especially in the event of a dispute, the court effectively verifies the legality of that decision on the basis of the administrative proceedings materials."

According to the case-law of the European Court of Human Rights, the principle of "good administration" should not prevent the authorities from promptly correcting their own mistakes, even those resulting from their own negligence. However, the need to correct an old "mistake" should not disproportionately hinder the new right of a conscientious individual to rely on the lawfulness of the action of a public authority. In other words, public authorities that do not apply or comply with their own procedures should not be entitled to benefit from their own wrongdoing or to evade their duties. The risk of any mistakes made by public authorities must be borne by the State itself and the mistakes must not be corrected at the expense of the individuals concerned (*Beinarović and Others v. Lithuania*, judgment of 12 June 2018, § 140).

#### *IV. Conclusion*

Taking into account the above, if we analyze the current legislation and judicial practice, when canceling illegal favorable administrative acts by administrative bodies, the administrative body should refrain from actions related to the restoration of the previous legal situation due to the administrative act it adopted. The mentioned case is essentially connected with the principle of protection of the right of trust of the interested person. Consequently, the cancellation of an illegal favorable administrative act adopted by the administrative body limits the exercise of its discretionary powers.

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