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CONCEPT, TYPES, REQUIREMENTS TO ADMINISTRATIVE ACT: UZBEKISTAN'S CASE

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Abstract
The article reveals the concept, role and necessity of administration. It is noted that the administrative act is the main legal form of public administration. The most significant elements of an administrative act are identified and substantiated from the point of view of the doctrine of administrative law and administrative legislation. Particular attention is paid to a comparative analysis of the norms of the current Law on Administrative Procedures with the new draft of it, which establishes the basic requirements for an administrative act. The features of lawful, contestable and void administrative acts, the differences between the cancellation, termination and invalidation of an administrative act, as well as some problems of the procedure for the cancellation of an administrative act are revealed.

Keywords: administration; administrative act; void act; cancellation; elements of an administrative act; Law on Administrative Procedures; Uzbekistan.

The state carries out the daily organization of the life of society: the management of the socio-economic, political, legal, cultural and spiritual spheres of society. For the proper management of these areas, the state needs appropriate tools. One of these tools is the legal acts of public administration, with the help of which the implementation of the functions of the state is carried out.
The process of administration is an expression of external administrative law, where there is an interaction between administrative bodies and private individuals. Administration itself is understood as "the resolution of practical issues that arise in specific situations of public life, directly affecting the will, legal status and interests of the subjects of administrative law".

From the course of administrative law it is known that there are legal forms of public administration - the establishment of the rules of law and the application of the rules of law. An administrative act is a legal form of state administration, through which law enforcement is carried out, i.e. specific case is allowed.

There are various classifications of acts of public administration. This article deals only with the classification of public administration acts depending on their legal properties (or legal content). According to this classification, these acts are divided into normative, individual and mixed acts.

Normative acts of public administration are by-laws through which legal establishment (administrative rule-making) is carried out. They are accepted mainly by ministries, state committees, agencies, centers and inspections. These acts have certain *characteristics:*

are accepted only in cases where the law gives permission for it;
specify the laws or acts of the President;
registered with the Ministry of Justice;
have their own source of publication;
can be challenged in an administrative court;
they establish rules of conduct binding on an indefinite circle of persons;
designed for repeated use.

In addition, individual legal acts of management, unlike normative ones, are law enforcement acts, i.e. they do not contain norms of law establishing generally binding rules of conduct for an unlimited circle of persons.

According to the theory of law, a legal act of an individual nature is understood as an act that establishes, changes or cancels the rights and obligations of specific persons (a similar definition also applies to an administrative act, which we will discuss below). These are decisions related to the resolution of specific management issues. Individual acts are adopted for the implementation of regulatory legal acts.

The institution of an administrative act, as well as administrative procedures, is the central element of positive administrative law. “The concept of an administrative act was a paramount topic in the science of general administrative law in Central Europe from the 19th century to the end of the 20th. Since the concept of an administrative act was associated with fundamental considerations or, more precisely, the requirements of a civil legal state, such as the dependence of the administration on laws (the principle of legality), the possibility of controlling legality through independent instances, the implementation of a formal procedure before issuing an act and the validity of this act after its issuance. These goals characterized scientific disputes with the institution of an administrative act”.

Speaking about the concept of an administrative act, according to the experience of Greece, Stefanos Kareklas notes that an administrative act is "a powerful act of an administrative body that regulates a specific case within the framework of administrative law, generates certain legal consequences and immediately enters into force".

Regarding to an individual administrative act, Marat Zhumagulov notes that "these law enforcement acts are applied once in a specific situation and this category of acts can be attributed to law enforcement acts of executive and administrative authorities. In other words, this type of act is presented in the form of a public, unilateral, authoritative, written declaration of will of the authorized state body, issued in accordance with the current legislation, aimed at the implementation of personified executive and administrative functions with a precisely established goal for the emergence, change and termination of administrative and legal relations ".

The authors of the book "Administrative Law of the Republic of Uzbekistan" note that "an administrative act is an outwardly directed (i.e. public addressee) imperious will, or command, of an administrative body of an individually specific nature. It aims to create legal consequences in the form of generation, change or termination of certain legal relations. This refers to the consequences of an individual-specific nature. Unlike a normative legal act, an administrative act does not establish legal norms. It resolves a specific management situation, directly affecting the subjective rights and obligations of the persons involved in it. Therefore, according to the classification of forms of government, we must attribute the administrative act to individual acts of government. It can be said that administrative acts are a kind of individual acts of state administration".

The Law of the Republic of Uzbekistan "On Administrative Procedures" (hereinafter referred to as **the Law**) provides the concept of an administrative act and the requirements for such an act. So, according to the Law, an administrative act should be understood as "a measure of influence of an administrative body aimed at creating, changing or terminating public legal relations and giving rise to certain legal consequences for individuals or legal entities or a group of individuals distinguished by certain individual characteristics".

If the administrative proceedings are presented as one whole procedure, then the administrative act is its end result, through which we can check whether the administrative proceedings were properly performed or not. This requires an analysis of the requirements for an administrative act.

An analysis of the relevant articles of the Law gives grounds to assert that not every act of public administration is an administrative act, because the Law establishes the

following 5 requirements for an administrative act, which in the science of administrative law are called elements of an administrative act (administrative body, authority, appearance, legal consequences, individuality):

1. The act must be adopted by the administrative body;
2. The administrative body must have the power to resolve this particular case (this is referred to in another concept enshrined in article 4 of the Law: administrative bodies - bodies endowed with administrative and managerial competence in the field of administrative and legal activities...);
3. This act must create, modify or terminate public relations;
4. This act must give rise to certain legal consequences;
5. This act must be sent to individual individuals or legal entities or a group of individuals who stand out on certain individual grounds.

In addition, the Law establishes another requirement for an administrative act - an administrative act must comply with the principles of administrative procedures. In particular, administrative acts and administrative actions must comply with the principles of administrative procedures.

Non-compliance with the principles of administrative procedures entails the cancellation or revision of administrative acts and administrative actions (art. 19 LAP).

Chapter 4 of the Law also establishes requirements for the form, content and validity of an administrative act.

Thus, according to Article 52 of the Law, an administrative act must be *in written form*. However, the legislation may provide for cases when an administrative act can be adopted in a different form, including by issuing another relevant document or performing certain actions. Such an understanding of an administrative act leads to the fact that many law enforcers understand an administrative act as a traditional document with the signature of an official and the seal of the body.

In this regard, in the new draft the Law "On administrative Procedures", this formulation is set out as follows: *an administrative act may be adopted in written or electronic form. Legislation may provide for cases where an administrative act may be adopted in another form, including orally, by means of signs, gestures and signals, by issuing an certifying document, or by performing certain actions, as well as by automatic means. If legislation provides for special requirements for the form of an administrative act, the administrative act must be adopted in a form that meets the special requirements.*

The theory of administrative law contains a classification depending on the form of expression of management acts, according to which the following are distinguished:

a) verbal (written and oral);
b) conclusive (traffic signs, special signals and designations, sound and noise signals, certain actions, etc.).

The next requirement for an administrative act is the requirement for its content. Article 53 of the LAP contains a requirement for the content of an administrative act, which must be legal, justified, fair, clear and understandable. In part 2 of the above mentioned norm of the Law, it is established that the administrative act must contain:

1) the name of the administrative act and the date of its adoption;
2) the name and location (postal address) of the administrative body that adopted the administrative act;
3) information about participants in administrative proceedings;
4) description of the issue resolved by the administrative act (descriptive part);
5) substantiation of the administrative act (motivation part);
6) statement of the decision made (operative part);
7) the term and procedure for appealing against an administrative act;
8) the position, name and surname of the official (members of the collegiate body) of the administrative body that adopted the administrative act.

Article 54 of the Law and such a requirement as the validity of an administrative act. Thus, according to this article of the Law, *the motivational part of the administrative act must contain all the factual and legal grounds for the adopted administrative act*.

When substantiating an administrative act, an administrative body shall not have the right to refer to evidence that has not been examined or attached to the administrative file in the course of the administrative proceedings, or which the participants in the administrative proceedings have not been given the opportunity to familiarize themselves with. If, when adopting an administrative act, an administrative body is endowed with administrative discretion (discretionary authority), the reasoning part of the administrative act sets out all the assessments, arguments and judgments that led to this or that administrative discretion (discretionary authority), or its refusal. At the same time, the administrative body must substantiate the compliance of the administrative act adopted by it with the principles of administrative procedures.

Violation of at least one of the above mentioned requirements for an administrative act entails the cancellation, amendment or invalidation of the administrative act.

Among the various classifications of administrative acts, there is also a classification depending on the degree of compliance with laws. According to this classification, administrative acts are distinguished:

a) lawful;

b) contestable administrative acts;
c) void administrative acts;

1. Lawful (justified) administrative acts are administrative acts that meet all the requirements that apply to them;
2. Contestable administrative acts - acts of a controversial nature, or unlawful (illegal). As A. I. Elistratov wrote, "in cases where the legal inconsistency of the act is not obvious, when the exact establishment of the shortcomings of the act that affect its legal force requires a certain study, the administrative act is considered to have arisen and be valid until it is canceled by way of appeal or by the administration itself. In such cases, they speak of the refutation or elimination of an act stained by legal shortcomings. Disputable acts of management contain such violations of the requirements imposed on them, which do not deprive them of legal force, but can be challenged in a judicial or administrative order by interested bodies or individuals. For example, voidable acts are acts containing inaccuracies of a factual nature. Such acts of management also include acts whose legal content is unclear, fuzzy, inconsistent with legal principles, provisions of legislative or other regulatory legal acts. The voidable act is valid until it is canceled or amended in the appropriate manner;
3. Void administrative acts (illegal; invalid) are administrative acts that are invalid and illegal from the moment they are issued or adopted, since it follows from the text of the act itself that it was adopted with obvious errors. They do not give rise to legal consequences from the outset. For example, acts issued in violation of the competence of the bodies that issued them or containing orders to subordinate persons to commit unlawful acts are void, i.e. inconsistency with public interests, or the absence of a seal, signature, full name in the administrative act, absence of the name of the administrative body, etc.

There are differences in the grounds for termination, cancellation and invalidation of an administrative act.

Thus, according to the Law, an administrative act is terminated due to:

1) expiration of the period of validity of the administrative act, if the administrative act is of an urgent nature;
2) the occurrence of a condition with which the administrative act links its termination;
3) repeal of the administrative act;
4) the disappearance of the subject of regulation.

Termination of the validity of an administrative act entails the termination of the validity of documents issued on its basis (Article 58 of the Law).

The grounds for invalidating an administrative act are regulated by Article 59 of the Law. These grounds are given in more detail in the new draft of the Law (in Article 74).

An administrative act is invalid if it is null and void or declared invalid by a competent authority or court.

The administrative act is void in whole or in part in the following cases:

1) it is impossible to understand which administrative body adopted an administrative act;

2) it is impossible to determine the addressee;

3) the administrative act has been adopted in a form not permitted by law;

4) an administrative act requires the addressee to commit unlawful actions or actions that are objectively impossible to carry out.

The nullity of a part of an administrative act shall entail the nullity of the administrative act as a whole, if the administrative act cannot be valid without this part.

An administrative body that has adopted a void administrative act or an administrative body of a higher instance is obliged to confirm the nullity of an administrative act on its own initiative upon its discovery or at the request of an interested person.

At the request of an interested person, an administrative act is subject to recognition as invalid by the administrative body that adopted it, by an administrative body of a higher instance or by another competent body, if:

1) the content of the administrative act is unclear or contradictory;

2) the administrative act has been adopted by an administrative body, do not have the appropriate authority;

3) is addressed to a wide range of interested parties in violation of the requirement provided for by the Law.

Annulment or amendment of an administrative act is always carried out together, since, considering each specific case, it can be canceled or amended.

According to the Law, an administrative act may be repealed or amended:

1) in cases where the need for this is due to changes in legislation, prevention of a threat to public interests, detection of non-compliance of an administrative act with legislation and in other cases provided for by law;

2) if an administrative act is found to be inconsistent with legislation;

3) by virtue of the requirement of the law or when establishing its illegality, with the exception of cases;

4) in cases where it becomes possible to improve the situation of the person concerned, without infringing on the rights and legitimate interests of other interested persons and without putting public interests at risk;
5) on the basis of a prosecutor's protest.

According to the Law, an administrative act may be canceled in favor of an interested person without holding a meeting.

The cancellation of an administrative act contrary to the interests of the person concerned is carried out by reviewing it at a meeting, unless otherwise provided by law. If the annulment of an administrative act is carried out in favor of one interested person, but contrary to the interests of another interested person, then the rules provided for by the relevant article and the Law shall apply.

REFERENCES

1. Хамедов И.А., Хван Л.Б., Цай И.М. Административное право Республики Узбекистан Общая часть. Учебник. – Т.: Konsauditinform-Nashr, 2012. – 592 с. (Khamedov I.A., Khvan L.B., Tsai I.M. Administrative law of the Republic of Uzbekistan General part. Textbook. - T .: Konsauditinform-Nashr, 2012. - 592 p.);
2. Ежегодник публичного права - 2014. «Административное право: сравнительно-правовые подходы». М.: Инфотропик медиа, 2014.-480с (Yearbook of Public Law - 2014. “Administrative Law: Comparative Legal Approaches”. M.: Infotropic media, 2014.-480 p.);
3. Ежегодник публичного права 2016: Административный акт. - М.: Инфотропик Медиа, 2015.-572с. (Yearbook of Public Law 2016: Administrative act. - M.: Infotropic Media, 2015.-572 p.);
4. Ежегодник публичного права 2019: Исполнение административных актов и судебных решений. - М.: Инфотропик Медиа, 2019. 260 с. (Public Law Yearbook 2019: Enforcement of administrative acts and court decisions. - M.: Infotropic Media, 2019. 260 p.);
5. Ежегодник публичного права 2017: Усмотрение и оценочные понятия в административном праве. - М.: Инфотропик Медиа, 2015.-368-380 (Yearbook of Public Law 2017: Discretion and evaluative concepts in administrative law. - M.: Infotropic Media, 2015.-368-380);
6. Ежегодник публичного права 2017: Интрументы действия административных органов. - М.: Инфотропик Медиа, 2021.- стр. 35-, 48-57, 58-64, 65-71, 72-83, 84-92, 93-98 (Yearbook of Public Law 2017: Instruments of action of administrative bodies. - M.: Infotropic Media, 2021 - pp. 35-, 48-57, 58-64, 65-71, 72-83, 84-92, 93-98);

7. «Немецкая доктрина административного права и становление института административных процедур в странах Центральной Азии. Материалы международной конференции, приуроченной к 45-летию со дня принятия Закона об административных процедурах Германии, г.Ташкент, 25 мая 2021 г. В кн.: Ученые записки Института государства и права Академии наук Республики Узбекистан. 2021. Том 1 //Отв.ред.Л.Б.Хван. – Ташкент «Niso Poligraf», 2022. – стр.130-148» ("The German Doctrine of Administrative Law and the Formation of the Institute of Administrative Procedures in the Countries of Central Asia. Proceedings of the international conference dedicated to the 45th anniversary of the adoption of the Law on Administrative Procedures of Germany", Tashkent, May 25, 2021. In the book: Scientific Notes of the Institute of State and Law of the Academy of Sciences of the Republic of Uzbekistan. 2021. Volume 1 // Editor-in-chief L.B. Khvan. - Tashkent "Niso Poligraf", 2022. - pp. 130-148);
8. Тенденции развития публичного права в современном Узбекистане: дискуссионные вопросы конституционного и административного права. Сборник материалов Республиканского научно-практического симпозиума с международным участием (Ташкент, 28-29 мая 2019 г.) и Международного научно-практического форума по административному праву (Шпайер, 6-7 июня 2019 г.) / Ташкентский государственный юридический университет. – Ташкент, 2021. – стр.175-185 (Trends in the development of public law in modern Uzbekistan: debatable issues of constitutional and administrative law. Collection of materials of the Republican Scientific and Practical Symposium with International Participation (Tashkent, May 28-29, 2019) and the International Scientific and Practical Forum on Administrative Law (Speyer, June 6-7, 2019) / Tashkent State University of Law. - Tashkent, 2021. - pp. 175-185);
9. Reimund Schmidt-De Caluwe. Der Verwaltungsakt in der Lehre Otto Mayers: staatstheoretische Grundlagen, dogmatische Ausgestaltung und deren verfassungsbedingte Vergänglichkeit. Tübingen: Mohr Siebeck, 1999;
10. Markus Engert. Die historische Entwicklung des Rechtsinstituts Verwaltungsakt. Frankfurt am Main 2002;
11. Давыдов К.В. Административные процедуры: российский и зарубежный опыт: монография / отв. ред. Ю. Н. Старилов. – Новосибирск: Академиздат, 2020. – 516 с. (стр.246-322) (Davydov K.V. Administrative procedures: Russian and foreign experience: monograph / ed. ed. Yu. N. Starilov. - Novosibirsk: Academizdat, 2020. - 516 p. (pp. 246-322)).