



ADMINISTRATIVE ACT IN THE LEGISLATION OF FOREIGN COUNTRIES

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ABSTRACT

In this article, the concept of an administrative act, the role and importance of an administrative act in legislation and practice of Uzbekistan, the specific characteristics of an administrative act, as well as the significance of the correct analysis of an administrative act were analyzed. At the same time, the problems arising in practice in understanding administrative acts and its application were studied.

It is known that an administrative act is the main subject of an administrative-legal dispute. For this reason, it is important to understand the concept of "administrative act", to distinguish administrative act from other documents. From this point of view, we will try to reveal the content of the administrative act by studying the legislation of foreign countries.

Theoretically, the correct interpretation of the administrative act makes it possible to declare the administrative acts invalid in the court when it is appealed. In this regard, different terms are used to define it in different countries: for example, "administrative act" (Verwaltungsakt) in German law, "order" (Verfügung) - in Switzerland¹, "executive

decision" (la decision exécutoire) in the French legal system. Among these terms, the concept of "administrative act" is the most common.

Western European sciences and law have long used the concept of "administrative act" and developed a wide theoretical and normative base for defining this type of act. In particular, for the first time the concept of an administrative act appeared in French laws, and from there it was adopted by all countries of the continental legal family².

If we look at the German legal system, at the end of the 19th century, Otto Mayer defined the administrative act as "an administrative judgment that should be decided in a specific case on this issue."

¹ Verwaltungsverfahrensgesetz vom 25.05.1976 (17.12.2008 geändert) (Закон об административном процессе) // Bundesgesetzblatt I S. 1253. Сборник законов об административных процедурах.

² Allgemeines Verwaltungsrecht / von Jörn Ipsen. Berlin, 2000. (General administrative law / by Jörn Ipsen. Berlin, 2000)



Until the end of the Second World War, that is, until the adoption of the Law on Administrative Procedure, there was no single normative concept of an administrative act in Germany: instead, the law consisted of orders, decisions, permits, benefits have been applied. Since the administrative act is a classic instrument of state management in Germany, the doctrine of the administrative act occupies an important place in German administrative law, or rather in its general part.

The main reason for the interest in the creation of the administrative act was the need to form a clear idea about the methods of legal protection from the measures taken by the state administration within the framework of public relations in the process of state administration.

According to Article 35 of the Administrative Procedure Act of 1976 (Verwaltungsverfahrensgesetz - VwVfG)³, the definition of an administrative act in German law today is "an act adopted and issued by an administrative body in the field of public law to regulate a specific case defined as any order, decision or other authorized action directed. This definition clearly defines the structure of management and reflects the public nature of these activities, focusing on the fact that the nature of the administrative act is directed not to internal regulation, but to external regulation.

From the point of view of legislation on administrative procedures, such a restrictive approach generally seems reasonable. Indeed, internal organizational

documents, as a rule, do not affect the legal status of non-state entities.

The concept of an administrative act existed even during the Soviet regime. However, in the concept of this period, not only documents issued by administrative bodies and addressed to external subjects, but also acts issued by state agencies within the framework of labor relations or civil relations were considered as administrative acts. Russian theory adopted the French approach to the concept of administrative "act". That is, administrative acts in the Russian legislation are divided into normative and individual acts, as well as court documents. According to it, an administrative act is a legal act adopted by a state body on a specific matter. In contrast to the regulatory-legal act of the administration, the administrative act does not create legal norms, but creates, terminates or changes one or another legal relationship, as a rule, administrative-legal relationship.

The administrative act is issued within the authority of this management body and brought to the attention of the executors in the prescribed manner. In the USSR, the administrative act is one of the methods of implementation of legal norms in the process of rapid management of economic, social and cultural development, in the implementation of administrative and political activities of the state. Administrative acts are diverse in terms of content and form: the decision of the Council of Ministers on the appointment of a member of the Council of Ministers, the order of the Minister on the appointment or transfer of the employees of the Ministry, the Executive Council of the Working Deputies committee's decision to place an order for a citizen's living space,

³ Verwaltungsverfahrensgesetz vom 25.05.1976 (17.12.2008 geändert) (Закон об административном процессе) // Bundesgesetzblatt I S. 1253.



the order of the director of the enterprise on the sale of unused equipment, work schedule, etc. Administrative act, as a rule, issues by laws or regulatory documents of management (Regulations on the Ministry, Regulations on the Socialist State Production Enterprise, laws on village, district, city, regional councils of workers' deputies etc.)

According to Article 4 of the Law on Administrative Procedures of the Kyrgyz Republic, adopted in 2015, "administrative act is an act of an administrative body or its official:

- a) has a public-legal and separately defined character;
- b) has an external effect (orientation to an external entity);
- c) creating legal consequences, that is, it is a document aimed at creating, changing or terminating rights and obligations for the applicant or an interested person.

In most of the CIS countries, the administrative act is called "acts of the state administration", "legal acts of management", "administrative document"⁴.

An administrative act cannot be synonymous with a "law enforcement document". In this regard, H.T.Odilqoriyev⁵ cited the analysis of concepts such as "law enforcement documents" and Z.M. Islamov "law enforcement (act) document". According to J.N. Nematov, "an administrative act is adopted within the framework of administrative procedures

and is related to administrative-legal relations. Accordingly, it differs from the law enforcement document.

Also, J.N. Nematov cites five main signs of an administrative act, i.e. 1) adoption by an administrative body, 2) orientation to external entities, 3) adoption based on authority, 4) legal result, 5) accuracy (individuality). According to this, the administrative act means any specific (individual) power measure that is adopted by the administrative body, directed at external subjects, creates legal consequences, and expresses the opinion that it is possible to understand⁶.

Analyzing the above points, we can say that the administrative act is adopted within the framework of public-legal relations and it contains the five main signs listed above. By its nature, it is a form of protection of the right to solve certain issues, and one of its main conditions is that it is aimed at external entities.

"Administrative act" can be issued not only in the form of a written or electronic document, but also in such forms as verbal, signals, light signals, signs. An administrative act is determined not by its issuance in the form of a written or electronic document, but by the main 5 (five) signs mentioned above.

⁴ Бахрах Д.Н., Хазанов С.Д. Формы и методы деятельности государственной администрации. Учебное пособие. – Екатеринбург, 1999. – С. 7. (Bakhrakh D.N., Khazanov S.D. Forms and methods of public administration activity. Tutorial. – Yekterenburg, 1999. – P. 7.)

⁵ Odilqoriyev X.T. Davlat va huquq nazariyasi. Darslik. – T.: Adolat, 2018. - B. 377. (odilqoriyev X.T. state and Law theory. Textbook. – T.: Adolat, 2018. - P. 377.)

⁶ Нематов.Ж.Н. Ўзбекистон маъмурий процедуралар конунчилиги асосларининг таҳлили (маъмурий актни суд амалиётида қўллаш мисолида). // Ҳуқуқий тадқиқотлар журнали 2019. – Б. 65. (Nematov J. Analysis of the legislative bases of the administrative procedures of Uzbekistan (On example of application of the administrative act in judicial practice))



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