

## The Role and Importance of Administrative Acts



### Administrative Law

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### Abstract

Classification of administrative act is quite complex and as such depends on legal systems of different countries, by giving them various elements, even though we mainly deal with the same forms. In this way, various theories are presented in the science of administrative law in endeavors for regulating the diversity of administrative acts, where they are grouped and regulated in various categories. In this regard, special role in division and regulation, namely the classification of legal acts, have also played the various power doctrines, where administrative acts are named according to the power they have: in legislative, judicial and administrative acts. In this work, we are going to analyze the importance of administrative acts.

### 1. Introduction

Theoretical processing of classification of administrative acts that presents an important concept in science of administrative law, anyhow leads us to the definition of criteria which could be used, respectively commonly used during the classification of administrative acts. The criteria for the classification of administrative acts are based on different perspectives.

### 2. Criteria for classification of administrative acts

These criteria, based on which the theoretical treatment of classification of acts takes place, are mainly based on the formal side of the issuance of acts, which deals with the initiative of its issuance, contents, the extent of its effect in space, the type of the competence of the body issuing the act.

In the theory of administrative law, the classification made to the act according to its subject importance is known. In this way, based on the importance of the subject, the administrative acts can be divided into declaratory, structural and commanding acts. Administrative declaratory act announces an important attribute from the person's legal point of view, such as naming a person the citizen of honor, financial support given to him, as various scholarships or subsidies"etc. Whereas, the commanding administrative act consists of orders or prohibitions and obliges the performance of a specified behavior, such as different traffic signs in the area of road traffic.

### 3. Normative or general acts (deeds)

Normative or general acts are acts issued by state administration bodies in their activity and regulate the norms of conduct in abstract way, respectively general way.<sup>82</sup> These general abstract rules are dedicated to many cases, by which the way of implementation of laws and other normative acts is determined.

<sup>82</sup> Sokol Sadushi, cited work, p. 52.

General (normative) act does not refer to a particular fact, but to a number of potential or hypothetical facts and in order to be the same for everybody it is formulated in the most general and abstract sense, by referring to everyone without discrimination and for any kind of fact.<sup>83</sup>

### 3.1. Regulation

Regulation is a normative legal or general act of administration bodies and as such has a normative character, as in its composition has general provisions, which must be implemented by administrative legal entities in relevant areas of the state administration.<sup>84</sup>

Basically, the regulation is issued for two purposes: the first, to determine the internal organization of the body, and second, to determine its scope.

Based on the legal power of regulation, it regulates the internal organization of work in the state administration bodies.

Unapproved regulation by the state authority act is not a legal act. In these cases, a decision or order issued by the competent authority is considered an administrative act.<sup>85</sup>

### 3.2. Direction

Direction is a normative or general administrative act, a document which implements legal provisions and other general acts of social political unions and their executive bodies.

The provisions of directions have narrower character than the regulation ones, and the difference between these two acts is that the provisions of the regulation are of general nature, while the provisions of directions are of narrower character.<sup>86</sup> For example, the direction orders or forbids an action in concrete situations having general character in implementation of laws and other provisions.

According to the Constitution, regardless that the Council of Ministers is not entitled to issue directions, but only decisions and instructions, this administrative act does not lose its importance in terms of studying by the science of administrative law, as it does exist as a legal act, because the issuance of direction is left under the competence of local government bodies.<sup>87</sup>

### 3.3. Instruction

Instruction is a normative legal act or general administration act issued for the purpose of administration, counseling or giving different instructions regarding the implementation of laws or other provisions and general acts of the assemblies and their executive bodies. Instruction is binding, but not always, because it is also nonbinding, or optional.

Binding instruction is usually issued by higher administration bodies addressed to lower administration bodies, in order to help them to more easily implement various provisions of law. While,

<sup>83</sup> Sokol Sadushi, cited work, p. 53.

<sup>84</sup> Dr. Esat Stavileci, cited work, p. 110.

<sup>85</sup> Sokol Sadushi, cited work.

<sup>86</sup> Dr. Esat Stavileci, cited work, p. 111.

<sup>87</sup> [www.itap.gov.al](http://www.itap.gov.al), presentation for public administration

optional instruction (nonbinding) is issued as professional instruction through which a higher authority instructs the other lower administration authority how to perform a professional task.<sup>88</sup>

Only the body to which such a right has been explicitly recognized is entitled to issue an instruction. According to the Constitution, an instruction can be issued by the Council of Ministers and Minister.<sup>89</sup>

#### **4. Concrete or individual acts**

Concrete or individual acts are legal acts which refer to a particular fact. The following elements are important for the administrative act: concretization, authoritativeness and its legal action. Therefore, we can say that an administrative act is a concrete legal act, contains provisions and is issued in authoritative manner,<sup>90</sup> for example building permit, decision for paying taxes etc.

Concrete acts, issued while solving administrative tasks in administrative procedure, decide on the rights, obligations, interests of citizens and legal persons.

##### **4.1. Individual and general acts**

Division of administrative acts into individual and general acts is made based on the basic criteria whether the act belongs to the persons individually specified or not specified. The characteristic of the individual administrative act is that a person, respectively persons to whom the act is addressed are listed by names, e.g. the permit given to a concrete person for opening a handicraft workshop etc.<sup>91</sup>

##### **4.2. Constitutive and declaratory acts**

Administrative constitutive acts are acts by which a legal relationship is created, changed or terminated, respectively a new legal relationship is created. In the administrative practice there are many such acts, e.g. decision for permit for construction of a certain building; permit for weapons etc.

Legal effects of this act begin from the moment of its issuance by the relevant administrative body.

The declaratory act only confirms the fact of previously created legal relations. For example, a declaratory act is the registration of a child birth, decision on retirement, mandatory retirement age prescribed by the law; decision on the right for children's allowances etc. The declaratory act does not create legal effect at the time of its issuance by the competent authority, but from the moment when the legal relationship is created, e.g. a child is considered to be born, not on the registration date, but on the date when it was actually born.<sup>92</sup>

##### **4.3. Positive and negative acts**

Positive acts are those administrative acts which make any kind of change in existing legal relationships, whether when new relationships are created, or modified or terminated.

<sup>88</sup> Dr. Esat Stavileci, cited work, p. 110.

<sup>89</sup> Sokol Sadushi, cited work.

<sup>90</sup> Dr. Esat Stavileci, cited work, p. 112.

<sup>91</sup> Internet sources, administration Bodies in Macedonia

<sup>92</sup> Sokol Sadushi, cited work.

Negative acts are those administrative acts, by which the change of existing legal relationship is refused. These acts are issued on request of the party.<sup>93</sup>

Main criterion of classification into positive and negative acts is the change of legal relationship. If the body made no declaration at all, then we are dealing with administrative silence. Administrative silence is considered when the competent body does not issue a decision in due time. If the procedure is opened by the request of the party, the deadline is 30 days from the delivery of request, while if the procedure is opened by the request of the body the deadline is 60 days.

#### 4.4. Legally related acts and acts based on free evaluation

Legally related acts are those administrative act,issuance and contents of which is determined in advance. An initiative to issue an act, and its contents, is explicitly provided by law.

Acts based on free evaluation are those acts where the body is entitled by the law that according to its free persuasion and evaluation of general interest decide on the concrete case, e.g. granting citizenship; giving certain aid etc.<sup>94</sup>

Administrative acts based on free or discreet evaluation are issued when the law allows a higher degree of freedom, while solving administrative tasks, respectively when choices are given in more alternatives or options, in solving concrete cases.<sup>95</sup>

#### 4.5. Acts of a body and complex acts

Classification of administrative acts and complex acts of a body is made according to the number of bodies participating in the issuance of an administrative act. The most common case is that the administrative act is issued by a body, whether individual or collegial.<sup>96</sup>:An administrative act may be issued by two or more bodies:<sup>97</sup>

- *Decisions on which two or more bodies will decide.* In this case each body shall decide on the case separately, but only one decision shall be given based on the agreement between the two bodies;

- *Decisions taken by a body with the consent of any other body.* The consent needed in these cases may be preliminary or supplementary, whereas the body solving the case and the body from which the consent is required are mostly of the same hierarchic level;

- *Decisions with certifications or with the permit of another body.* On these cases, the certification or permit is required by a highest body;<sup>98</sup>

- *Decisions based on the opinion of the other body.* Although the opinion of the other body is necessarily required, in these cases, the composition of the opinion itself does not oblige the body to decide on the concrete case.

<sup>93</sup> Dr. EsatStavileci, cited work, p. 112.

<sup>94</sup> Ibidem, p. 114.

<sup>95</sup> Internet sources, state administration bodies.

<sup>96</sup> Dr. EsatStavileci, cited work.

<sup>97</sup> Internet sources, state administration bodies.

<sup>98</sup> Ibidem, Internet sources, state administration bodies.  
Dr. EsatStavileci, cited work.

## 5. Material acts

Material acts are acts on which different notes on various occurrences are taken or various notes and data are communicated and facts on those data are proved. General characteristic of the material acts is that they do not create legal effects, and that they do not determine unilateral obligations.<sup>99</sup>

Material acts are not acts in the technical sense, but simple administrative professional actions.

There are different material acts classified in:

- evidencing or documentation acts;
- acts of giving and taking statements,
- acts of notification or communication.

### 5.1. Evidencing and documentation acts

Include acts where evidence, respectively the documentation of occurrences and different data are held, e.g. registers, protocols, different registry books, lists, files etc.<sup>100</sup> Certification is not an administrative act, but it is a public document that gives data on occurrences, features and evidenced facts.

### 5.2. Acts of giving and taking statements

Based on the requests of various entities, administrative bodies receive various complains and requests, such as statements presenting economic and personal situation of various entities; tax statement; customs statement; marriage statement; statement of childbirth; statement of death etc.<sup>101</sup>. These acts are similar to declaratory administrative acts; the only difference is that they do not create legal effects.

### 5.3. Notification and communication acts

Include notifications, communications and different indicators on certain data for various entities and notify the interested persons on the situation, facts and various occurrences and promulgate legal acts.

Special classification of other material acts, where all administrative actions related to other professional or technical work are included, and which cannot be included in any of the above mentioned categories, e.g. working with clients etc.<sup>102</sup>

## 6. Effect of administrative acts

An administrative act contains its legal order which, according to the consequences it creates, may have different character. Legal consequences created by the issuance of the act can create obligations, non implementation of which constitutes illegitimacy, as it may also bring benefit or favors. According to legal

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<sup>100</sup> Ibidem, p. 116.

<sup>101</sup> Internet sources, state administration bodies.

<sup>102</sup> Dr. Esat Stavileci, cited work.

effects caused by the act for entities to which it refers, it is known another kind of their classification, in binding and ordering administrative acts and in profitable or favoring administrative acts.<sup>103</sup>

### **7. Binding administrative acts**

Binding element of the administrative act also means the applicability or efficiency the act brings in practice. Obligation in the administrative act can be predicted by performing certain actions requiring the realization of the purpose for which the administrative act is issued: e.g. the order of the Minister of Finance obligating the Director General of Customs that within a specified period of time issue an act regulating a certain relationship in the field of customs, the form of fine given by the traffic police for payment of the fine amount within a certain timeline, etc.<sup>104</sup>

### **8. Beneficial administrative acts**

An act does not create only orders, obligations, prohibitions or restrictions for the entities of law. An administrative act, beside obligations, can also create benefits, or favors for entities to which it refers.

When a natural or legal entity is entitled by the competent authority, e.g. to carry out a construction, or to obtain a license or certificate of competence to practice a particular activity, it is understood that the right or the benefit in this case belongs to the entity that benefits from this administrative act.<sup>105</sup>

It should be noted that the competent administrative body is obliged, in accordance with the criteria set by the law, to recognize such right to the citizen. So, in these cases it is sufficient the fulfillment of the criteria of the law that the administrative body, the branch of social security, is obliged to provide the citizen with the relevant pension,<sup>106</sup> or the Ministry of Interior to provide citizens with passports.

From the formal-legal point of view, the beneficial administrative act may be issued as a decision, or permit, evidence, license, receipt, etc.

### **9. The initiative for issuance of an act**

The administrative act requires the declaration of a legal willingness of the competent body. This expressed willingness for issuing an administrative act may be initiated by the competent administrative body itself, or by a legal order that may be foreseen by the constitution or concrete law<sup>107</sup> or by the request of interested entities. According to this criterion, the administrative acts are classified in:

- Administrative acts issued by the initiative of the body;
- Administrative acts issued by the request of interested entities;
- Administrative acts issued by order of law;
- Administrative acts issued by the order of court decisions

<sup>103</sup> Sokol Saldushi, cited work.

<sup>104</sup> Ibidem, p. 47.

<sup>105</sup> Ibidem, p. 49.

<sup>106</sup> Ibidem, p. 50.

<sup>107</sup> [www.itap.gov.al](http://www.itap.gov.al), presentation for public administration.

### **10. Administrative acts issued by the initiative of the body**

The task of public administration body is to finally concretize its executive and ordering activity with the issuance of respective administrative act.

The administrative body with its own initiative determines whether to intervene in resolving a legal dispute or increasing, changing or terminating a legal consequence by determining the manner and form of intervention on how to properly show this willingness of the state.

### **11. Administrative acts issued by the request of interested entities**

In the administrative practice of issuing legal acts, state administration bodies in the exercise of their functions protect public interests, constitutional and legal rights and interests of private persons.<sup>108</sup>

Failing to consider the request, or no response at any given time, creates the possibility of administrative or judicial review of the act, as well as legal responsibility of the body.<sup>109</sup>

### **12. Administrative acts issued by order of laws**

This category of acts constitutes the second classification in the criterion of the way of issuance of administrative acts and is present in the executive activity of public administration. According to this classification criterion, the binding orders are the ones that envisage all laws approved by the Parliament, the starting point that serves the issuance of these acts.<sup>110</sup>

All laws in their final provisions oblige the administration bodies of the Cabinet of Ministers or the relevant minister to fulfill or regulate in detail the legal relations in certain field by administrative bodies for issuing new bylaws.

### **13. Administrative acts issued by order of court decisions**

Court decisions may also initiate the issuance of an administrative act. The administrative act, being the subject of an administrative dispute, may be abrogated by the court for reasons of legality. If a decision of the Council of Ministers with normative character regulating certain relations in the area of property, e.g. shall be abrogated as unconstitutional by the Constitutional Court, then a legal gap for legal relationship in question shall be created. It is the decision of the Constitutional Court, which by declaring the specific administrative act as unconstitutional, at the same time obliges the respective body, the Council of Ministers to issue a new administrative act, not contrary to the Constitution.<sup>111</sup>

### **14. The way of expression of the act**

The way of expressing the state willingness for issuing an act by the administrative body requires a certain form of expression of this willingness. Administrative acts have their written and verbal form. This is imposed by the circumstances.

<sup>108</sup> See article 10 of the Administrative Procedure Code.

<sup>109</sup> Sokol Saldushi, cited work.

<sup>110</sup> Ibidem, p. 42.

<sup>111</sup> [www.itap.gov.al](http://www.itap.gov.al) presentation on public administration.

The form, on which an administrative act should be presented, is dictated by the fact that by being a legal expression of the executive and ordering activity of public administration bodies, creates, changes or terminates various legal relations.

Failure to submit the administrative act in the form required by the law shall be considered opinion, message, idea with different names, but shall not be considered an administrative legal act.<sup>112</sup>

#### **14.1. Administrative act in written form**

Administrative acts have written form, except cases when, another form is required by the law. Written form is the most general and acceptable form in administrative practice.

Written form is the most applicable form, because it is concretely presented with all elements an administrative act is concretized, and with consequences created by its non-implementation. Administrative act is considered to be issued if registered in the minutes of the voting and approving meeting.

#### **14.2. Administrative act in verbal form**

Administrative acts are also presented in verbal form, but this kind of form in administrative practice is rarely encountered. Verbal acts are presented in managing administrative bodies, especially at those with individual character.

Verbal order given by the Prime Minister, Minister or any other manager of an institution is concretization of such kind of administrative act, but this verbal order cannot be given by the bodies acting collegially, e.g. by the Council of Ministers, council of municipality<sup>113</sup>.

#### **14.3 Administrative act in form of signs**

Another form of expression of the act is through actions, conventional signs, movements performed by bodies or persons designated by law to such functions. These ways of expressing the willingness of the legal authority create, as written and verbal acts, the same legal consequences. Every administrative body cannot perform such actions that are presented in the form of signs.

### **Conclusion**

Classification of administrative acts serves to the methodology of theoretical study from the science of administrative law, and at the same time presents an essential importance for administrative practice.

In general, the classification is a methodological aspect by which data for the administrative act are given for the purpose of analyses, understanding and study. Looking from various angles and criteria, there are various and miscellaneous administrative acts, so the need occurred not only to classify them according to the power, but the need and interest of a more detailed classification of administrative functions. Also,

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<sup>112</sup> Sokol Saldushi, cited work.

<sup>113</sup> Ibidem, p. 45.

Ibidem, p. 46.



there are cases where classification of an administrative act affects its entry into force, or other jurisdictional issues.

Classification of administrative acts serves to the methodology of theoretical study, treated by the science of administrative law, but does not deteriorate the importance that this classification presents for administrative practice from which nobody is excluded and everyone needs it in his daily activity, whether it is a public administration body, or any subject of law.

Administrative acts, although lower in the hierarchy with the law, may regulate claims and rights of citizens and other entities in more detailed way. They can take the form of rules of general application, or specific enforcement decisions. While, laws serve to elaborate principles in a constitution, the administrative acts process the rules of a law. Modern legislation are not equipped to specify all necessary details for the implementation of a law, so often these details are left to be determined by the executive administrative acts.

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